NO. 23-CV-413

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

MA SHUN BELL,

Appellant,

v.

WEINSTOCK, FRIEDMAN & FRIEDMAN, P.A./ FRIEDMAN, FRAMME & THRUSH, P.A.,

Appellee.

Appeal from the District of Columbia Superior Court
***Civil Division No.* 2019 CA 008461 B**
(*Hon. Yvonne Williams, Judge*)

BRIEF OF APPELLEE FRIEDMAN, FRAMME & THRUSH, P.A., formerly known as WEINSTOCK, FRIEDMAN & FRIEDMAN, P.A.

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CERTIFICATE REQUIRED BY RULE 28(A)(2) OF THE RULES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

The undersigned, counsel of record for Friedman, Framme & Thrush, P.A., formerly known as Weinstock, Friedman& Friedman, P.A., certifies that the following listed parties and their counsel appeared in the trial court below and will appear before this court:

1. Plaintiff below and appellant herein: Ma Shun Bell, an individual.

2. Counsel for plaintiff below and appellant in this court: Radi Dennis, Esquire of the law firm Commercial Justice Esq.

3. Named as a defendant below and appellee herein: Weinstock, Friedman & Friedman, P.A., a law firm.

4. Named as a defendant below and appellee herein: Friedman, Framme & Thrush, P.A., a law firm.

5. Counsel for Friedman, Framme & Thrush, P.A., formerly known as Weinstock, Friedman & Friedman, P.A. below and in this court: David M. Ross, Esquire, Kevin P. Farrell, Esquire and Daniel Coffman, Esquire of the law firm Wilson, Elser, Moskowitz, Edelman, & Dicker LLP.

6. There are no *amici*.

7. There are no corporate entities, parent companies, subsidiaries, and affiliates.

These representations are made in order that judges of this Court, *inter alia*, may evaluate possible disqualification or recusal.

/s David M. Ross
David M. Ross, Esq.

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STATEMENT REGARDING APPELLATE JURISDICTION

This appeal is from the final order by District of Columbia Superior Court Judge Yvonne Williams granting Weinstock, Friedman, & Friedman, P.A.'s, now known as Friedman, Framme, & Thrush, P.A.'s Motion to Dismiss that disposed of all of Ma Shun Bell's claims in D.C. Superior Court Case No. 2019 CA 008461 B.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Appellee Friedman, Framme & Thrush, P.A., formerly known as Weinstock, Friedman & Friedman, P.A. (the "Law Firm") presents the following issues for this Court's review:

1. Appellant Ma Shun Bell ("Bell") concedes that she failed to make required payments and defaulted on the retail installment sales contract ("RISC") she used to finance the purchase of a car. Bell alleges that she was not afforded proper notice that upon default of the RISC her car would be repossessed and sold to reduce the deficiency owed to her creditor, First Investors Servicing Corporation ("FISC"). FISC is not a party to this lawsuit. The operative complaint concedes that prior to representing its client FISC in court, the Law Firm had no role in the sale of Bell's car, the financing of the car, the repossession of the car, or the collection of the deficiency owed by Bell on the RISC.

Question Presented: Did the trial court properly determine that the Law Firm was not a "secured party" under the District of Columbia Uniform Commercial Code

("UCC"), and properly dismiss with prejudice the UCC cause of action because the Law Firm was not under any duty to comply with the notice requirements, or any other obligations, under the UCC?

2. Bell's unfair and deceptive trade practices claims against the Law Firm are based entirely on the allegation that the Law Firm filed a lawsuit in D.C. Superior Court Small Claims Branch on behalf of its client, FISC.

Question Presented: Did the trial court properly determine that the Law Firm's professional legal services of filing a lawsuit on its client's behalf cannot violate the District of Columbia Consumer Protection Procedures Act ("CPPA"), and cannot violate the District of Columbia Automobile Financing and Repossession Act ("AFRA")?

3. The D.C. Debt Collection Law ("DCL") generally prohibits debt collectors from using coercive or harassing tactics to collect a debt. In the operative complaint, Bell's DCL cause of action lists a variety of actions prohibited by the DCL, but does not set forth any specific factual allegations to establish any elements of the DCL claim.

Question Presented: Did the trial court properly determine that Bell did not identify a plausible claim for relief, and properly dismiss the DCL claim?

4. Bell avers that the Law Firm committed an abuse of process by filing a lawsuit on behalf of FISC to recover a deficiency from Bell which it allegedly knew

could not be lawfully recovered because of alleged procedural defects in FISC's repossession process. The trial court held that in support of the abuse of process claim, Bell did not plead that the Law Firm did anything more than file a lawsuit on behalf of its client.

Question Presented: Did the trial court properly determine that because FISC's suit was intended to achieve a lawful aim (collecting the deficiency), the filing of the suit cannot be the basis for a claim of abuse of process?

5. Upon remand, the trial court ordered that the Law Firm may "file evidence and argument related to the issue of res judicata…and/or a motion to dismiss on any other grounds." In addition to its motion to dismiss Bell's causes of action, the Law Firm filed a dispositive motion for the narrow application of res judicata as to Bell's claims based in part upon the representation agreement between the Law Firm and its client FISC.

Questions Presented: Did the trial court properly consider the terms of the representation agreement, and properly determine that because FISC provided its legal interest to 30% of its financial recovery from Bell as compensation for the Law Firm's representation in seeking that recovery, the Law Firm and FISC had a mutuality of interest?

Did the trial court properly determine that because privity exists between FISC and the Law Firm with respect to Bell's claims, the Law Firm is entitled to

assert res judicata on the same grounds as FISC did in the related case- thereby barring Bell's claims under the UCC, CPPA and abuse of process doctrine insofar as those claims seek to nullify the judgment in favor of FISC in Small Claims Court?

STATEMENT OF THE CASE

This case arises from the repossession of Bell's car in 2016 by a third-party, FISC, and a subsequent debt collection action filed by FISC. The Law Firm served as FISC's litigation counsel in the debt action. Bell alleges that the Law Firm violated the UCC, AFRA, CPPA, and DCL, and committed abuse of process, by filing the debt action against Bell. Bell filed a separate complaint against FISC, alleging similar claims based on slightly different legal theories. In that separate case, the Court of Appeals upheld a res judicata dismissal decision for FISC for alleged acts after the repossession and sale of her car and remanded for further findings involving that earlier period. *Bell v. First Investors Serv. Corp.*, 256 A.3d 246, 258 (D.C. 2021).

This matter against the Law Firm has previously been before this Court of Appeals, and the lengthy procedural history of this litigation is set forth in the April 20, 2023 Order and is incorporated herein by reference. JA21-25.

The narrow issues for the Court of Appeals to consider on this appeal relate to the Superior Court's April 20, 2023 Order, which granted the Law Firm's motions

to dismiss and dismissed Bell's Second Amended Complaint with prejudice. JA20-41.

A few months prior to that, the Court of Appeals issued a decision on November 23, 2022, reversing and remanding the Superior Court's previous dismissal in full. *Bell v. Weinstock, Friedman & Friedman, P.A.*, 285 A.3d 505, 509-11 (D.C. 2022) ("*Bell II*"). The Court of Appeals held that the Superior Court applied res judicata without analyzing whether the Law Firm had a sufficient "mutuality of interest" with FISC such that the two were in privity. *Id*. The Court of Appeals remanded the issue to the Superior Court for further fact-finding. The Court of Appeals noted that *"*we make no determination regarding whether [Bell's] claims may be dismissed on alternative grounds." *Id*. at 511-12.

Upon remand of this case, Bell filed a Motion for Leave to File a Second Amended Complaint on January 18, 2023. JA11. On February 21, 2023, the Superior Court granted the motion over the Law Firm's objections. JA42-46. The Superior Court stated that it will:

> [A]llow [the Law Firm] 21 days to file a motion to dismiss containing any evidence and argument that [the Law Firm] and FISC have a 'mutuality of interest sufficient to establish privity between them and therefore that the doctrine of res judicata applies. If [the Law Firm] wishes to seek dismissal of the Second Amended Complaint on any other grounds, it may do so simultaneously.

JA45. The Superior Court specifically ordered "that Defendant shall have 21 days from the date of this Order to file evidence and argument related to the issue of res judicata as articulated herein and/or a motion to dismiss on any other grounds." JA46.

On March 14, 2023, the Law Firm filed two motions to dismiss: one addressing the deficiency in each of Bell's causes of action and one addressing res judicata. JA13.

The Law Firm demonstrated that Bell's claims should be dismissed because Bell has not alleged that the Law Firm had any role in the sale, financing, or repossession of her car. JA50-51. The Law Firm also showed that each of Bell's causes of action should be dismissed because they fail to state an actionable claim under the specific factual allegations contained in the Complaint.

Independently, the Law Firm demonstrated that because it entered into a representation agreement in which FISC would assign deficient accounts to the Law Firm, and the Law Firm would receive a 30% commission for all sums recovered, FISC and the Law Firm were in privity on the narrow issue of Bell's debt and FISC'S debt collection lawsuit. Because Bell and FISC were in privity, the Law Firm contended that the trial court must dismiss all of Bell's claims against the Law Firm except for those which survived in the related but separate action brought against FISC associated with the repossession of Bell's car: the AFRA and related CPPA

claims.

Upon consideration of the motions and Bell's oppositions, the Superior Court dismissed all counts in the Second Amended Complaint ("Complaint") with prejudice. JA20-41. Ms. Bell noticed her appeal from that Order.

The Law Firm filed several other motions and oppositions in this time frame related to discovery and class certification. Because the Complaint was dismissed in its entirety, with prejudice, the other motions were denied as moot. JA20.

STATEMENT OF FACTS

In 2012, Bell purchased a car from a dealership in Maryland. JA50 ¶ 8; *see Bell v. First Investors Servicing Corp*., 256 A.3d 246, 251-53 (D.C. 2021) ("*Bell I*") (noting that the sale occurred in Maryland). She financed the purchase through a retail installment sales contract with A&H Motors that was subsequently assigned to FISC. *Bell I*, 256 A.3d at 249. In 2016, Bell fell behind on her payments. JA50 ¶ 10.

FISC repossessed the vehicle in the District of Columbia. JA 50-51 ¶¶ 11-16; *Bell I*, 256 A.3d at 249. On March 29, 2017, FISC, with the Law Firm acting as its litigation counsel, filed a Complaint for $8,271.4 in the D.C. Superior Court, Small Claims Branch, to recover a deficiency related to the RISC. JA51 ¶ 17. On May 17, 2017, Plaintiff, then acting *pro se*, participated in Court-sponsored mediation and signed a settlement agreement with FISC to resolve the case. *Bell I*, 256 A.3d at 250.

She agreed to pay FISC $150 per month until her debt was paid off. *Id*. If she failed to make any payment, FISC would be entitled to a default judgment. *Id*. Bell failed to make a payment in 2018, and, on August 8, 2018, FISC obtained a judgment. *Id*.

STANDARD OF REVIEW

Bell seeks review of the Superior Court's April 20, 2023 decision and Order granting the Law Firm's motions to dismiss the Complaint. Because a motion to dismiss under Super. Ct. Civ. R. 12(b)(6) presents a question of law, the standard of review for a dismissal by a lower court is *de novo*. *Casco Marina Dev. L.L.C. v. District of Columbia Redevelopment Land Agency*, 834 A.2d 77, 81 (D.C. 2003); *Executive Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 730 (D.C. 2000). This Court "may affirm a judgment on any valid ground, even if that ground was not relied upon by the trial judge or raised or considered in the trial court," so long as doing so would not be procedurally unfair. *Logan v. Lasalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1020-1021 (D.C. 2013).

SUMMARY OF ARGUMENT

Affirmance is warranted. The trial court properly determined that Bell failed to state a claim against the Law Firm for alleged violations of UCC, AFRA, CPPA or DCL because the Complaint concedes that the Law Firm had no role in the sale of her car, the financing of the car, its repossession, or collection of the deficiency prior to representing the Law Firm's client in court. The trial court properly

determined that the UCC claim fails because the Law Firm was not a secured party, as defined in the statute, and therefore had no duty to provide Bell notice that her car was being repossessed. The trial court properly determined that the AFRA and CPPA claims fail because, as a matter of law, the Law Firm's professional act of filing a lawsuit on behalf of its client cannot violate the AFRA or CPPA. The trial court also properly determined that the DCL claim fails because Bell did not allege how the Law Firm violated the DCL, and instead merely recited what that DCL prohibits. Similarly, the trial court properly dismissed the abuse of process claim because the lawsuit filed by the Law Firm on behalf of its client was intended to achieve a generally lawful aim (*i.e.*, collecting money owed to FISC pursuant to contract) and there are no allegations that the Law Firm had an ulterior motive or sought to coerce Bell into taking some action other than paying the deficiency.

Finally, the trial court properly considered the terms of the representation agreement between the Law Firm and its client, pursuant to which FISC provided its legal interest to 30% of its financial recovery from Bell as compensation for the Law Firm's representation in seeking that recovery. Based on the mutuality of interest established in that agreement as applied to the debt collection action, the trial court

properly applied the doctrine of res judicata and found that the UCC, CPPA and abuse of process claims against the Law Firm are barred.[1]

ARGUMENT

I. Bell failed to state a viable claim for alleged violations of the D.C. Uniform Commercial Code because the Law Firm was not a "secured party" and did not owe Bell any duties under the UCC.

On appeal, Bell argues that Law Firm violated two provisions of the D.C. UCC. Appellant's Brief ("Br.") at 42. First, the Law Firm is alleged to have violated D.C. Code § 28:9-611, which requires a secured party to provide "reasonable authenticated notice of disposition" before disposing of collateral under § 9-610. Second, Bell alleges the Law Firm violated D.C. Code § 28:1-304 by not acting in good faith. As the trial court correctly noted, the UCC cause of action fails because: (a) Bell does not include any factual allegations that the Law Firm had any involvement in the repossession or sale of her vehicle; and (b) the UCC duties Bell alleges the Law Firm violated only apply to secured parties, as that term is defined

[1] The Law Firm rejects all of the arguments presented by Bell in the Appellant's Brief. It would be impracticable, if not impossible, to attempt to itemize, articulate and rebut each of the seemingly endless, irrelevant, and unsupported arguments presented by Bell in her 50-page brief. In any event it is not necessary to do so. This Appellee's Brief endeavors to demonstrate why, applying the applicable standard of review to the narrow issues presented on appeal, affirmance is warranted. Anticipating a baseless "waiver" argument presented in countless briefs in this litigation, the Law Firm does not concede any of Bell's arguments; and will address any issues not specifically addressed in this brief at the Court's request or at any oral argument.

in the statute. JA 27-28. There is no dispute that the Law Firm was not a "secured party."

A. Bell does not allege that the Law Firm had any involvement in the repossession or sale of her vehicle.

The trial court rightly noted that Bell does not allege that the Law Firm had any involvement in the repossession or sale of her vehicle. JA 28; JA50-51 ¶¶ 11-16. Rather, she simply alleges that in March 2017, the Law Firm (on behalf of Bell's creditor, FISC), filed suit in the District of Columbia to recover an $8,000 deficiency. JA51 ¶ 17. Absent any factual allegations that the Law Firm was involved in the repossession or sale of her vehicle, Bell cannot claim that the Law Firm violated the UCC in the notice and sale of her vehicle. "Bare allegations of wrongdoing that are no more than conclusions are not entitled to an assumption of truth, and are insufficient to sustain a complaint." *Bereston v. UHS of Delaware, Inc.,* 180 A.3d 95, 99 (D.C. 2018).

B. The Law Firm is not a "secured party" as defined by the UCC.

Even if Bell had alleged the Law Firm was involved in the sale of her vehicle, the Law Firm does not owe Bell any duty under the UCC. Based on the plain language of the statute, § 9-611 only requires "a *secured party* that disposes of collateral under § 28:9-610" to provide authenticated notice of disposition. (emphasis added). The statute defines "secured party" as:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under § 28:2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

D.C. Code § 28:9-102(73). The Complaint contains no allegations that the Law Firm was a "secured party" as defined by the statute, and Bell does not even attempt to demonstrate otherwise in her opening brief. Nor does Bell allege that the Law Firm "disposed of the collateral." Accordingly, the Law Firm did not have a duty to provide Bell with authenticated notice of the disposition.

Bell alleges that the Law Firm violated § 1-304, which imposes a duty of good faith in the performance and enforcement of every contract or duty within the subtitle. Bell argues, without providing any explanation as to how, that the Law Firm violated its duty of good faith. It appears that Bell's allegations about the violation of the duty of good faith is enmeshed with her allegation that the Law Firm failed to provide authenticated notice under § 9-611. Br. at 42. In any event, comment 1 to §

1-304 states: "This section does not support an independent cause of action for failure to perform or enforce in good faith."

Finally, Bell's statement that UCC liability is not limited to "secured parties" but applies to "persons" is irrelevant. Br. at 42. Section 9-625, titled "Remedies for a secure party's failure to comply with this article" establishes the remedies for a secured party's noncompliance with the UCC; it does not establish additional obligations or duties. Rather, as explained by comment 2 to § 9-625, the section provides "the basic remedies afforded to those aggrieved by a secured party's failure to comply with this Article." As such, § 9-625's use of the word "persons" has no impact on the preceding sections, which only establish duties upon "secured parties".

Because Bell does not allege that the Law Firm is a secured party and cannot identify a single duty under the UCC that the Law Firm has violated, the trial court's dismissal of Bell's UCC claim should be affirmed.[2]

II. Bell failed to state a viable claim for alleged violations of the Consumer Protection Procedures Act because the CPPA does not apply to professional services provided by attorneys, and debt collection is not a trade practice.

[2] At the trial court, Bell alleged additional violations of the UCC, such as failure to sell her repossessed vehicle in a commercially reasonable manner. Because Bell makes no mention of these provision in her opening brief, and because the Complaint contains no allegations that the Law Firm was involved in the sale, these allegations are not at issue in this appeal (and they are otherwise unsupported).

Bell's CPPA claim fails for two independent reasons. First, attorneys are exempt from regulation under the CPPA under D.C. Code § 28-3903(c)(2)(C). Because Bell's claims against the Law Firm are based entirely on the Law Firm's actions in its capacity as counsel for Bell's creditor, her CPPA claim must fail. Moreover, the CPPA does not apply to debt collection, which is not a "trade practice" as defined by the statute.

A. The professional services exemption of the CPPA applies to the Law Firm.

Bell's claims against the Law Firm indisputably arise out of the professional services it performed for its client. By its terms, the CPPA is inapplicable to lawyers and legal services. The CPPA expressly excludes from its purview the "professional services of . . . lawyers." D.C. Code § 28-3903(c)(2)(C); *See Bergman v. District of Columbia*, 986 A.2d 1208, 1227 (D.C. 2010) (noting attorneys are expressly exempted from regulation under the CPPA, and citing D.C. Code § 28-3903(c)(2)(C)); *Banks v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 634 A.2d 433, 437 (D.C. 1993) (noting that the CPPA excludes from its purview the professional services of lawyers); *Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697, 715 (D.C. 2013) (affirming dismissal of a CPPA claim against a law firm for allegedly filing an unfair or deceptive suit on a client's behalf because the CPPA "specifically excludes attorneys"). Bell's attempt to recast her allegations as distinct from legal services is unsupported. The specific

factual allegations in her Complaint against the Law Firm are in the context of the Law Firm's legal services for its client, FISC.

B. Debt collection is not a "trade practice" as defined by the CPPA.

Even if the Law Firm were not exempted from the CPPA by § 28-3903(c)(2)(C), Bell's claim would still fail because debt collection is not a "trade practice" as defined by the CPPA. *Baylor v. Mitchell Rubenstein & Assoc.*, 55 F.Supp.3d 43, 52-54 (D.D.C. 2014). Rather, the CPPA states that "'trade practice' means any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services." D.C. Code § 28-3901(a)(6).

In *Baylor*, the question was whether letters sent by a debt collection firm amounted to unfair trade practices in violation of the CPPA. *Baylor*, 55 F.Supp.3d at 48. The letters at issue "were sent by defendants in an attempt to collect debts allegedly owed to the creditor that hired defendants." *Id*. at 53-54. In dismissing plaintiff's CPPA claim, the court explained that because the defendant debt collector was "not offering to sell or provide plaintiff with any goods or services, including consumer credit" their efforts were not "trade practices" under the plain language of the CPPA. *Id*. at 54.

Bell argues that the Law Firm's filing of the small claims suit was a "trade practice" under the CPPA and that this court is not bound by *Baylor*. Br. at 38. While

Bell is correct that *Baylor*, a case decided by a federal court, is not binding, Bell does not make a coherent argument as to why the reasoning in *Baylor* is incorrect and cannot cite a single Court of Appeals decision to support its claim that the mere filing of a suit constitutes a "trade practice" under the CPPA.

III. Bell failed to state a viable claim for alleged violations of the Automobile Financing and Repossession Act because the Law Firm had no role in the repossession or sale of her vehicle.

As rightly noted by the trial court, the regulations made pursuant to the District of Columbia's Automobile Financing and Repossession Act ("AFRA") are only enforceable through a CPPA claim. D.C. Code § 28-3904(dd). Accordingly, if the Law Firm's actions as legal counsel for Bell's creditor are exempted from the CPPA, Bell cannot pursue her claims for the Law Firm's alleged AFRA violations via the CPPA. JA29.

Even if Bell could pursue a CPPA claim, she has not alleged facts to support a claim that the Law Firm violated AFRA. Bell alleges that the Law Firm violated AFRA in connection with the repossession and sale of her vehicle. JA63. Specifically, she alleges she did not receive the pre- and post-repossession notices required by AFRA. *See* 16 DCMR § 341. She then alleges that proper notice was not supplied by her creditor [FISC], precluding her deficiency. *See* 16 DCMR § 346 (stating "a deficiency does not arise unless the holder has complied with the . . . mandatory and discretionary notice requirements set forth in § 341").

Bell's AFRA claim against the Law Firm fails because she does not allege that the Law Firm had any involvement in the repossession or sale of her vehicle. JA50-51 ¶¶ 11-16. To the contrary, she vaguely and generically alleges that, upon information and belief, her car was repossessed and that she was not provided the required notices by her creditor [FISC]. *Id*. The Law Firm's only alleged involvement was filing suit on behalf of her creditor, the Law Firm's client FISC, for an alleged $8,271.14 deficiency. *Id.* ¶ 17.

Even if Bell's allegations that her creditor did not comply with AFRA's notice requirements, and therefore no deficiency arose, had merit the Law Firm's filing suit based on FISC's claim that it was owed a deficiency is not a violation of AFRA. Nowhere does the text of AFRA make it unlawful to file suit based on a disputed deficiency. Because Bell has not alleged that the Law Firm had any contact or involvement with her regarding the repossession or sale of her car, she cannot maintain a claim against the Law Firm for violating AFRA.

IV. Bell's conclusory statements that the Law Firm violated the Debt Collection Law fail to state a claim.

The trial court properly dismissed Bell's D.C. Debt Collection Law ("DCL") cause of action because she failed to allege more than bald conclusions that the Law Firm violated the DCL. JA29-31. Rather than plead facts, Bell merely recites what the DCL prohibits. JA67-69 ¶¶ 93-100. The Court of Appeals previously affirmed the dismissal of Bell's DCL claim against FISC in *Bell I*, on the same grounds, noting

that a plaintiff "must plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." 256 A.3d at 258 (quoting *Close It! Title Servs. V. Nadel*, 248 A.3d 132, 138 (D.C. 2021). Bell did not learn from the Court of Appeals' affirmance of the dismissal of her DCL claim. Bell's Complaint provides no specific factual allegations to support a DCL claim against the Law Firm, but once again makes legal conclusions unsupported by any factual allegations.

To survive a motion to dismiss a plaintiff must "set forth sufficient facts to establish the elements of a legally cognizable claim." *Bell I*, 256 A.3d at 258 (citing *Woods v. District of Columbia*, 63 A.3d 551, 552-53 (D.C. 2013). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice, and unadorned, the-defendant-unlawfully-harmed-me accusations also are insufficient." *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015) (cleaned up); *Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016) ("A complaint does not 'suffice if it tenders naked assertion[s] devoid of further factual enhancement.'").

Bell argues that her Complaint satisfies the District's pleadings requirement, citing allegations she asserts were overlooked by the trial court. Br. at 45-46. But Bell's brief only highlights the conclusory nature of her allegations and supports affirmance of the trial court's dismissal.

Bell first argues the Law Firm violated § 28-3814(c), which prohibits debt collectors from collecting or attempting to collect any money alleged to be due and owing by means of any threat, coercion, or attempt to coerce in any way. Bell argues her allegation that the Law Firm filed a "deficiency barred lawsuit in small claims" is sufficient to state a claim for violation of this section. Br. at 45. Bell does not expand on how the Law Firm's filing of a collection action against Bell for money alleged due could be construed as a "threat" or "coercion" under the statute.

Next, Bell contends the Law Firm violated § 28-3814(f)(5), which prohibits debt collectors from using any "unfair, fraudulent, deceptive, or misleading representation, device, or practice to collect a consumer debt or to obtain information in conjunction with the collection of a consumer debt." Bell asserts that the Law Firm misrepresented that a deficiency was owed and misrepresented the "character/extent/amount of a claim through a sworn and false affidavit." Br. at 45. Again, Bell does not present any factual allegations to support these conclusory assertions.

The trial court's order did not address whether Bell must prove willfulness to prevail on her DCL claim, finding that Bell's Complaint failed regardless. JA30. Even if Bell's Complaint sufficiently pled the other elements of her claim, Bell failed to plead facts to support an inference that the Law Firm acted willfully, as was required by the DCL in 2017 when the Law Firm represented FISC in its lawsuit

against Bell. D.C. Code § 28-3814(j)(1) (2017). The willfulness requirement has since been removed from the statute.

Bell argues that because the DCL has been amended to remove the willfulness requirement she no longer has to plead or prove willfulness to prevail on her DCL claim. This is not so. There is not dispute that the law at the time Bell brought suit against the Law Firm, the DCL required "[p]roof by substantial evidence, that a creditor or debt collector has willfully violated" a provision of the DCL. D.C. Code § 28-3814(j)(1) (2019).

The general rule in the District of Columbia is that a statute is not applied retroactively unless there is a clear legislative showing that it ought to be given retroactive effect. *Wolf v. D.C. Rental Accommodations Com.*, 414 A.2d 878, 880 n. 8 (D.C. 1980). Further, there is a strong presumption that legislation that affects substantive rights will operate only prospectively. *Lacek v. Wash. Hosp. Ctr. Corp.*, 978 A.2d 1194, 1197 (D.C. 2009) (citing *Landraf v. USI Film Prods.*, 511 U.S. 244, 285 n.37 (1994)). Because there is no indication that the newly enacted DCL was intended to have retrospective effect and because applying the new legislation would affect the Law Firm's substantive rights, the prior version of the law that existed at the time the conduct occurred and when suit was filed applies to Bell's claim.

V. Bell failed to state a viable claim for abuse of process because she does not allege that the Law Firm used the legal system to achieve some end that is outside the scope of the legal process.

Bell concedes that under Court of Appeals precedent, allegations of knowingly filing an unfounded or frivolous claim is not by itself an abuse of process. Br. at 47; *Morowitz v. Marvel*, 423 A.2d 196, 198-99 (D.C. 1980). Bell argues that her allegations that the Law Firm regularly files unfounded suits against others should alter the Court of Appeals' analysis of her claim. Br. at 46-47. Additionally, Bell claims that her case is different because the Law Firm submitted a false affidavit with the suit claiming Bell owed money for a deficiency when she did not. Br. at 47.

There is no factual base in the Complaint for the allegation that the Law Firm submitted a false affidavit. And in any event, these arguments ignore longstanding precedent to the contrary.

The tort of abuse of process "lies where the legal system has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be required to do." *Bown v. Hamilton*, 601 A.2d 1074, 1079 (D.C. 1992) (cleaned up). The Court of Appeals has further explained that "[t]he mere issuance of the process is not actionable, no matter what ulterior motive may have prompted it; the gist of the action lies in the improper use after issuance." *Morowitz*, 423 A.2d at 198 (citations omitted). "In short, simply filing a lawsuit is not actionable, regardless of the motive that may have prompted the suit." *Kopff v. World Research Group, LLC*, 519 F.Supp.2d 97, 100 (D.D.C. 2007) (citing

Morowitz, 423 A.2d at 198). "[U]nder District of Columbia law even an allegation that a plaintiff knowingly brought suit on an unfounded claim is not by itself an abuse of process." *Kopff*, 519 F.Supp.2d at 100; *Great Socialists People's Libyan Arab Jamahiriya v. Miski*, 683 F.Supp.2d 1, 9 (D.D.C. 2010) (a complaint alleging that the defendant "knowingly brought suit on an unfounded claim," is by itself "not an abuse of process"). Bell cites no precedent that a law firm's filing setting forth the amounts the firm's client asserts it is owed constitutes abuse of process.

The trial court rightly concluded that, even accepting Bell's allegations that the Law Firm's suit on behalf of Bell's creditor was frivolous and that the deficiency sought could not be legally recovered, she did not state a claim for abuse of process under D.C. law. Because the suit was intended to achieve a lawful aim—collecting a deficiency—Bell failed to state a claim for abuse of process against Bell's creditor, or the Law Firm. JA32-33.

On appeal, Bell argues her case is different as the Law Firm regularly files suit against other consumers for debts the firm knows it cannot collect. But allegations that the Law Firm files claims against other persons, for judgements it may or may not be able to enforce, does not have any impact on Bell's abuse of process claim.

Next, Bell argues that her allegations that the Law Firm submitted an allegedly deceptive and false affidavit to the Court distinguishes her claim from the cases cited

by the trial court. In doing so Bell ignores other D.C. cases refuting this assertion. *See Moradi v. Protas, Kay, Spivok & Protas, Chartered*, 494 A.2d 1329, 1330, 1333 n.7 (D.C. 1985) (noting that the plaintiff did not state a claim for abuse of process where (1) the defendant's agent had "negligently or falsely swor[n] that he had served summonses" on him in three cases, (2) the defendant had then obtained a default judgment and writ of attachment in each case, and (3) the defendant, knowing the plaintiff was not served, had obtained a judgment of condemnation); *Page v. Comey*, 628 F.Supp.3d 103, 131 (D.D.C. 2022) (allegations that government agents made material misstatements and omissions to obtain multiple warrants without probable cause not enough to state a claim for abuse of process under D.C. law); *Rauh v. Coyne*, 744 F.Supp. 1186, 1194 (D.D.C. 1990) (explaining that under D.C. law abuse of process "does not arise from a misrepresentation to the Court").

The only D.C. Court of Appeals case Bell relies upon is *Shipe v. Schenk*, 158 A.2d 910 (D.C. 1960). As explained in the trial court's order, *Shipe* does not support Bell's claim. JA33-34. *Shipe* arose out of a separate suit in which Hollywood Credit Clothing Company ("Hollywood") sued Shipe, claiming he owed it $76.09 for merchandise purchased eight years prior. *Id*. at 911. Shipe denied ever purchasing anything from the Hollywood. After suit was initiated, but before obtaining a judgment, Hollywood issued an attachment against Shipe's employer. Shipe's employer then withheld $115 of his wages and paid it to Hollywood. *Id*. Hollywood

then filed a *praecipe* in the debt action asking the court to enter the judgment—which did not exist—as paid. *Id*. Shipe then filed suit for, among other things, abuse of process.

As noted by the trial court, there are significant differences between *Shipe* and Bell. The most apparent is that the abuse of process alleged in *Shipe* was not the act of filing a suit to collect a debt, but garnishing Shipe's wages with an attachment *before* judgment was entered and then attempting to deceive the clerk of the court into recording a judgment that did not exist. *Id*. Unlike Hollywood, the Law Firm merely filed a civil suit on behalf of its client seeking to recover an alleged debt. That Bell had potential defenses to the collection of the debt does not open the Law Firm up to suit for abuse of process.

As noted by the trial court, Bell's citation to the federal district court decision in *Osinubepi-Alao v. Plainview Fin. Servs.*, 44 F.Supp.3d 84, 94 (D.D.C. 2014) is not persuasive considering it conflicts with D.C. Court of Appeals precedent and does not provide any significant analysis of the abuse of process claim.

Finally, Bell cites *McCullough v. Johnson, Rodenburg, & Lauinger, LLC*, 637 F.3d 939 (9th Cir. 2011) (applying Montana law). But the Ninth Circuit's interpretation of Montana's abuse of process law has no value when binding D.C. Court of Appeals precedent exists, as is the case here.

Ultimately, Bell's abuse of process claim is premised on the notion that there were flaws in the repossession process that would have arguably meant she did not owe a deficiency. That is, Bell alleges that the Law Firm filed a lawsuit on behalf of its client FISC that Bell could have disputed. That is not an actionable abuse of process claim, and the Court of Appeals should affirm the decision of the trial court.

VI. Bell's UCC, CPPA, and abuse of process claims are barred by the doctrine of res judicata.

The trial court properly determined that Bell's UCC, CPPA, and abuse of process claims are barred by the doctrine of res judicata. JA38. The court's res judicata determination serves as an additional and independent basis for the dismissal of the UCC, CPPA and abuse of process claims.

In *Bell I*, a case filed by Bell against FISC based on the same underlying facts as here, the Court of Appeals affirmed the dismissal of most of Bell's UCC, CPPA, and abuse of process claims based on res judicata. 256 A.3d at 257-58. The Court of Appeals explained that under the nullification exception Bell was barred from bringing claims that, if successful, "would nullify FISC's initial [small claims] judgment or impair its right under that judgment." *Id*. at 255. The Court accordingly affirmed the res judicata dismissal for FISC for alleged acts after the repossession and sale of Bell's car. *Id*. at 258. Bell's Complaint does not contain specific factual allegations against the Law Firm for any alleged conduct by the Law Firm against her for the period prior to the repossession and sale of her car.

In *Bell II*, the Court of Appeals analyzed whether the trial court's dismissal of Bell's claims against the Law Firm based on res judicata was proper. 285 A3d 505. In short, the *Bell II* court reversed and remanded because the trial court did not analyze whether Bell and FISC had a mutuality of legal interests—a requirement to show privity for purposes of res judicata. *Id*. at 511. The court indicated that if FISC and the Law Firm had a mutuality in their legal interests Bell's claims would be subject to dismissal based on res judicata, just as her claims against FISC in *Bell I*.

Thus, on remand, the only question before the trial court with respect to res judicata was whether FISC and the Law Firm shared a mutuality of legal interests. As such, on February 21, 2023, the trial court invited the Law Firm to "file evidence and argument related to the issue of res judicata … and/or a motion to dismiss on any other grounds." JA45. The Law Firm proceeded to file a motion to dismiss based on res judicata and quoted and thereafter provided the court and Bell with the Law Firm's representation agreement with FISC. The court granted the Law Firm's motion, finding FISC and the Law Firm shared a mutuality of interest based on the Law Firm's agreement with FISC that it would be entitled to a 30% commission on any sums recovered and the circumstances of FISC's lawsuit against Bell. JA36.

A. The trial court did not abuse its discretion in denying Bell's Rule 56(d) motion and granting the Law Firm's res judicata motion.

The trial court's res judicata decision was straightforward and appropriate. Bell argues that the Court had to wait until the end of fact discovery because it

considered the plain representation agreement provisions between the Law Firm and FISC in "analyzing the mutuality of their legal interests," the analysis the Court of Appeals directed in *Bell II*, 285 A.3d at 511. Br. at 20-21. Bell's argument fails for multiple reasons.

B. The Law Firm properly put its representation agreement with FISC before the trial court to facilitate the trial court's mutuality of legal interests analysis.

The Law Firm complied with the trial court's reasonable order on remand to "file evidence and argument related to the issue of res judicata … and/or a motion to dismiss on any other grounds." JA45. Bell cites no court decision that supports any impropriety in the trial court's order or the Law Firm's submission in response. In the Law Firm's March 14, 2023 res judicata motion, the Law Firm quoted the specific portions of its representation agreement with FISC, which established that, under the circumstances of FISC's collection case against Bell, in which the Law Firm represented FISC as its counsel, the mutuality of interest test was met.

Bell put the Law Firm's representation of FISC in the collection lawsuit at issue in her Complaint, JA17, permitting the trial court's consideration of the representation agreement without the necessity of converting the Law Firm's res judicata motion into the open-ended postponed summary judgment motion that Bell requested. *See, e.g., Sum-Slaughter v. Fin. Indus. Regul. Auth., Inc*., 320 A.3d 313,

319 n.22 (D.C. 2024) (documents referenced in complaint are properly considered in assessing dismissal).

C. Bell did not make a sufficient showing to convert the Law Firm's res judicata motion into a delayed summary judgment motion.

In response to the Law Firm's res judicata motion, Bell filed a document 28 days later, on April 11, 2023, which she titled "Opposed Motions pursuant to Rule 56(d) and for an Extension of Time to Oppose Summary Judgment Motion and Motion to Strike until after Discovery Completion and Resolution and Compliance with all Discovery-related Orders." JA14. On pages 5-6 of that filing, Bell stated that she "cannot oppose" the Law Firm's res judicata motion and motion to strike class allegations "without merits and class discovery providing what state laws are at issue, Defendants [*sic*] complete retainer with FISC…class member locations, Defendants [*sic*] file system, Defendants [*sic*] litigation process for filing claims, deposition of Mr. Glick, Defendants [*sic*] agreements with creditors, putative class member files, the number of potential class members." Bell further asserts on pages 6-7 that she "specifically requests":

- All agreements governing the relationship, the servicing agreement; the forward flow agreement; the agreement governing the contractual relationship between Defendants and any other entities relating to Defendants' collection of deficiency debt; documents related to the scope of services provided by Defendants, the fee arrangement for each identified type of service; documents concerning the duties and responsibilities of Defendants to any such entities and vice versa, operating procedures, points of contact, how consumer payments are provided to such entities and/or to Defendants, scope of authority relating to the allege debts.

- All documents relating to the salary, commission, and bonus records for collectors, law firms, supervisors, and employees of Defendants relating to collection of deficiency debts during the five (5) years prior to the filing of this lawsuit.

- All pre-sale and post-sale repossession notices in Defendants' possession during the relevant period.

- All documents relating to the ownership of alleged deficiency debts stemming from the repossession of a vehicle.

Bell chose not to file a substantive opposition to the Law Firm's res judicata motion, and therefore the Law Firm had no occasion to file a reply brief for its res judicata motion.

Immediately after Bell's April 11, 2023 filing, the Law Firm filed that same day a supplement containing the entirety of the contingency agreement with FISC. JA14. The supplement allowed Bell and the Court to confirm that the Law Firm had accurately quoted the representation agreement in the Law Firm's res judicata motion.

Bell then filed on April 18, 2023 her "Reply to Opposition Motions pursuant to Rule 56(d) and for an Extension of Time to Oppose Summary Judgment Motion and Motion to Strike until after Discovery Completion and Resolution and Compliance with all Discovery-related Orders." JA15. On page 5 of that filing, Bell asserted that she needed to depose the affiants from the Law Firm and FISC that authenticated the representation agreement "about the alleged agreement filed by

Defendants and their business arrangement in practice as well as third parties implicated by the alleged agreement. Additional discovery relating to the agreement itself – specifically the meaning of multiple provisions therein and discovery relating to payments made by Defendants and relating to the actual debt is also required." Bell's generalized assertions did not identify any specific provision that was unclear or ambiguous at issue in the representation agreement, or for which she needed discovery. Bell also did not allege that the Law Firm had misquoted the representation agreement in its res judicata motion. On April 20, 2023, the trial court issued its decision granting the Law Firm's res judicata motion and separate motion to dismiss addressing Bell's causes of action. JA20-41.

Even if Bell were correct that the Law Firm's res judicata motion should have been treated as a summary judgment motion, Bell's filing 28 days later, on April 11, 2023, and her April 18, 2023 reply filing were insufficient to require the trial court to delay deciding the Law Firm's res judicata motion, or to establish that the trial court committed reversible error here. Bell's filings did not automatically entitle her to the open-ended, overbroad discovery she demanded and to substantially delay the trial court's analysis of the specific issue this Court remanded for that analysis. *See, e.g., Mahmood Nawaz v. Bloom Residential, LLC*, 308 A.3d 1215, 1230 (D.C. 2024) (finding that plaintiff's "discovery request under Rule 56(d) failed to explain with specificity what facts he needed to oppose summary judgment and why they were

material to the legal claims at issue"). A nonmovant's request in a Rule 56(d) affidavit "must be specific," and the "party must demonstrate precisely how additional discovery will lead to a genuine issue of material fact." *Id.* at 29 (quoting *Travelers v. United Food Commercial*, 770 A.2d 978, 994 (D.C. 2001)).

To meet a nonmovant's burden, courts recognize that a Rule 56(d) request cannot be vague, conclusory and overbroad, as was the case here. *See, e.g., Xerox Corp. v. Bus-Let, Inc*., No. 18-CV-6725-FPG, 2019 U.S. Dist. LEXIS 101652, *9 (W.D.N.Y. Jun. 17, 2019) (finding party's "claimed need for discovery" under Rule 56(d) was "largely vague and conclusory" and noting that a "party may not use Rule 56(d) as a means of finding out whether it has a case") (quoting *DePaola v. City of New York*, 586 F. App'x 70, 71 (2d Cir. 2014)); *Madsen v. Risenhoover*, No. C 09-5457 SBA (PR), 2012 U.S. Dist. LEXIS 90810, *7 (N.D. Cal. Jun. 27, 2012) ("In making a Rule 56(d) motion, a party opposing summary judgment must make clear 'what information is sought and how it would preclude summary judgment'" and finding that plaintiff's "reasons in support of his Rule 56(d) motion are vague, overbroad, and fail to state what specific records he is seeking," and, "[m]ore importantly, he fails to allege how 'additional discovery would have revealed specific facts precluding summary judgment'") (citations omitted). Indeed, Bell agrees that this case involves the "standard payment arrangements of the vast majority of plaintiff attorneys and their clients." Br. at 29.

D. The Law Firm's res judicata motion was based on the undisputed facts of FISC's collection lawsuit and the straightforward representation agreement between FISC and the Law Firm.

The bases for the Law Firm's res judicata motion, the circumstances of FISC's collection lawsuit against Bell and the provisions in of the representation agreement between FISC and the Law Firm, are not in dispute. JA98-122. The Law Firm's agreement with FISC is straightforward and its plain terms addressed the issue regarding the contingent nature of the relationship between FISC and the Law Firm as applicable to FISC's lawsuit against Bell. JA95-151. *See, e.g.*, *Hartford Life & Accident Ins. Co. v. Moore*, No. CV 11-436-TUC-FRZ, 2013 U.S. Dist. LEXIS 191414, *5 (D. Az. Sept. 30, 2013) (finding that "further discovery" as requested "under a Rule 56(d) motion" was not "needed because the plain language of the contract is already apparent" and the "additional discovery requested would not assist in this inquiry").

Bell argues that the "mere existence of an attorney-client relationship involving a contingency fee agreement" is insufficient to establish a mutuality of legal interests. Br. at 28. But the trial court's analysis properly tethers that agreement with the circumstances of FISC's collection lawsuit against Bell to properly find that a mutuality of legal interests existed to establish privity between FISC and the Law Firm and therefore qualify for application of res judicata here. JA34-37. As the trial

court recognized, citing *Bell II*, the "mutuality of interests test is highly circumstantial and does not lend itself to bright-line rules." JA35.

The Law Firm and FISC could have had an hourly fee representation agreement, a flat fee arrangement, or an alternative fee arrangement. But they did not. They had a contingency fee agreement. JA92-151. As applied to FISC's collection lawsuit, only if FISC, represented by the Law Firm, collected amounts allegedly owed by Bell would FISC or the Law Firm collect any funds, with the Law Firm entitled to 30% of those amounts. JA36. The collection lawsuit could have, but did not, involve the ownership of an account or property, specific performance, injunctive relief, or other circumstances or relief where a colorable argument could be made that FISC and the Law Firm did not have a mutuality of legal interest as to the legal action at issue. JA36-37, 168. As the trial court recognized, "FISC and [the Law Firm] had a mutual interest in recovery of the deficiency from Ms. Bell. The representation agreement between FISC and [the Law Firm] stipulated that FISC would assign delinquent accounts to [the Law Firm] and [the Law Firm] would be entitled to a 30% commission on any sums recovered." JA36. The trial court further grasped that the "representation agreement unites FISC's and [the Law Firm's] interests more than even in a standard contingency agreement." JA36-37.

As the trial court aptly recognized, given "FISC's sought-after recovery was purely monetary," the Law Firm and "FISC's purely monetary interests combined

with their enhanced contingency representation agreement establishes a mutuality of interests with respect to Ms. Bell's claims." JA37. The trial court found that this conclusion was reinforced because "if FISC's suit against Ms. Bell in 2017 to recover the deficiency was unsuccessful," the Law Firm would not "have been able to assert its own claim against Mr. Bell to recover the deficiency." JA37.

Bell argues that the Law Firm's status as an independent contractor in its representation agreement with FISC and the Law Firm not obtaining a legal interest in Bell's underlying account with FISC precludes a mutuality of interest. Br. at 30-32. That misses the point. It is the mutually shared interest in collecting amounts owed on the delinquent account, not ownership of the account itself, that was at issue and justified the trial court's finding that the mutuality of interest test was met.

Under the circumstances at issue, the Law Firm and FISC's interests would be "similarly affected by the outcome of a legal proceeding." *Rucker v. Schmidt*, 794 N.W. 2d 114, 120 (Minn. 2011). The Law Firm's "legal interests aligned" with FISC's. *Richardson v. McCabe*, No. 23-CV-0024, 323 A.3d 446, 2024 D.C. App. LEXIS 358, *22 (Sept. 26, 2024). *See also Brown v. Dayton*, 730 N.E.2d 958, 962 (Ohio 2000) (finding that a "mutuality of interest" "includ[es] an identity of desired result"); *Womack v. Ward*, No. 17-cv-3634-DKC, 2018 U.S. Dist. LEXIS 131349, *6 (D. Md. Aug. 6, 2018), *aff'd*, 755 F. App'x 262 (4th Cir. 2019) (finding that law firm and mortgage servicer were in privity with substitute trustee attorneys of law

firm and mortgage servicer appointed substitute trustees to initiate foreclosure action because "all share a mutual interest with respect to the validity of foreclosure judgment"); *Bressi v. Thompson*, 2024-Ohio-2244, P24-P25 (Ct. App.) (finding that a receiver "was in privity with Mr. Bressi because they both had a mutual interest, or a desired result, to recover money and assets due and owing to Mr. Bressi in satisfying the terms" of the agreement at issue).

E. The sole remaining issue left on remand for application of res judicata was whether the Law Firm and FISC had a mutuality of interest in FISC's collection suit against Bell.

The Court of Appeals was clear in its directive that on remand, the trial court was to "analyz[e] the mutuality of the[] legal interests" between FISC and the Law Firm as to FISC's collection lawsuit against Bell. *Bell II*, 285 A.3d at 511. Bell's panoply of arguments includes a reference to Rule 14 not permitting naming the Law Firm in FISC's small claims collection lawsuit against Bell. Br. at 24-25. That misses the point and revisits issues the Court of Appeals already addressed. The issue at hand is whether the Law Firm has a mutuality of legal interest with FISC, against which Bell could have raised claims and defenses, thereby permitting the application of res judicata here and precluding Bell's claims against the Law Firm. *See, e.g., Richardson*, 2024 D.C. App. LEXIS 358, at *13, *18-19 (noting plaintiff "could have litigated the subject matter of each of her claims in the instant suit in the foreclosure litigation" and "res judicata will bar a subsequent suit even if the prior

judgment is alleged to have been the product of 'intrinsic fraud,' *i.e*., if the merits of the claim involve alleged fraud," such as "misleading statements" "about the payoff amount of her loan").

Because the trial court properly determined that privity exists between FISC and the Law Firm with respect to Bell's claims as the mutuality of interest test was satisfied, the Law Firm was entitled to assert res judicata on the same grounds as FISC did in the related case. JA37. This was consistent with the contours of Bell's claims as the Court of Appeals determined in its remand decision. JA37, citing *Bell II*, 256 A.3d at 256. The trial court recognized that the Court of Appeals "has already determined that res judicata bars Plaintiff's claims under the UCC, CPPA, or abuse of process doctrine insofar as they seek to 'nullify the judgment in favor of FISC' in Small Claims Court." *Id.* Accordingly, the trial court found, the Law Firm was "entitled to assert res judicata on the same grounds as FISC did in *Bell I*." JA37, citing *Bell II*, 285 A.3d at 507-08.

F. The Law Firm's res judicata motion was not precluded by earlier dispositive motion filings.

Bell incorrectly contends that the Law Firm's dismissal filings were precluded because the Law Firm had earlier filed a motion to dismiss and briefing on the mutuality of legal interests had not occurred. Br. at 25-27. Upon remand by the Court of Appeals in December 2022, Bell moved for leave and the trial court granted her permission to file a Second Amended Complaint on February 13, 2023. JA12. In

response to that newly filed Complaint, the Law Firm submitted its motions to dismiss on March 14, 2023. JA13. Bell cites no authority setting forth that a dispositive motion filed in response to an earlier complaint precludes a later motion filing against a superseding amended complaint.

VII. Whether prayers for relief are subject to dismissal on a Rule 12(b) motion is not at issue.

Bell argues that prayers for relief are not subject to dismissal under Rule 12(b). Br. at 50. Bell does not explain how this argument is relevant to the order being appealed, as the trial court dismissed the entirety of Bell's claim with prejudice. Because the trial court dismissed all of Bell's causes of action, it did not need to address whether Bell's requests for punitive damages or injunctive relief could or should be dismissed. *Rayner v. Yale Steam Laundry Condo. Ass'n*, 289 A.3d 387, 401 (D.C. 2023) (noting that injunctive relief and damages are legal remedies, not causes of action, and a court cannot grant a remedy without a cause of action); *Air Line Pilots Ass'n v. Twin City Fire Ins. Co.*, 803 A.2d 1001, 1005 (D.C. 2002) (noting "only claims or causes of action give rise to relief") (citation omitted).

Although the trial court did not address this issue in the order being appealed, Bell's brief invites this court to give the trial court guidance as to how to handle this issue should it arise in the future. It would be improper for this court to issue such an advisory opinion. *Smith v. Smith*, 310 A.2d 229, 231 (D.C. 1973) (noting that it

is beyond the power of courts to render opinions upon issues that may or may not arise).

CONCLUSION

Judge Williams' decision is well-founded and consistent with the decisions of the Court of Appeals. Judge Williams' decision granting the Law Firm's motions to dismiss should be affirmed.

Dated: November 22, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of November 2024, a copy of the foregoing Brief of Appellee Friedman, Framme & Thrush, P.A., formerly known as Weinstock, Friedman & Friedman, P.A., was electronically filed and served via the Court's eFiling system to:

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