

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 18-2743(L), 18-3033(Con), 18-2860(XAP), 18-3165(XAP) Caption [use short title]

Motion for: Adjournment of Oral Argument Consumer Financial Protection Bureau v. RD Legal Funding, LLC

Set forth below precise, complete statement of relief sought:

The Consumer Financial Protection Bureau seeks to adjourn oral argument until after the United States Supreme Court issues a decision in Seila Law v. CFPB.

MOVING PARTY: Consumer Financial Protection Bureau OPPOSING PARTY: RD Legal Funding, LLC

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Christopher Deal OPPOSING ATTORNEY: Michael Roth

[name of attorney, with firm, address, phone number and e mail]

Consumer Financial Protection Bureau Boies Schiller Flexner LLP
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Court Judge/Agency appealed from: United States District Court for the Southern District of New York (Preska, J.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No Has this relief been previously sought in this Court? Yes No

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Requested return date and explanation of emergency:

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: November 21, 2019

Signature of Moving Attorney: Christopher Deal

Date: October 22, 2019

Service by: CM/ECF Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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.

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

Defendants-Appellees-Cross-
Appellants.

No. 18-2743 (L)

No. 18-3033 (Con)

No. 18-2860 (XAP)

No. 18-3156 (XAP)

**AFFIRMATION IN
SUPPORT OF
MOTION TO ADJOURN
ORAL ARGUMENT**

CHRISTOPHER DEAL, an attorney admitted to practice before this Court, affirms under penalty of perjury the following:

1. I am a Senior Counsel in the Legal Division of the Consumer Financial Protection Bureau and am counsel for Plaintiff-Appellant-Cross-Appellee Consumer Financial Protection Bureau in these appeals. I submit this affirmation in support of the Bureau's motion to adjourn oral argument, currently scheduled for November 21, 2019, until after the

United States Supreme Court issues a decision in *Seila Law, LLC v. CFPB*, No. 19-7 (U.S.).

2. On Friday, October 18, 2019, the United States Supreme Court granted a petition for a writ of certiorari in *Seila Law v. CFPB*, No. 19-7. The Court will consider two questions: (1) Whether the vesting of substantial executive authority in the Consumer Financial Protection Bureau, an independent agency led by a single director, violates the separation of powers? and (2) If the Consumer Financial Protection Bureau is found unconstitutional on the basis of the separation of powers, can 12 U.S.C. § 5491(c)(3) be severed from the Dodd-Frank Act?

3. Although *Seila Law* has not been scheduled for argument yet, the Bureau's understanding is that argument will be held during the Supreme Court's current Term. The Bureau therefore anticipates that the Supreme Court will issue a decision by the end of the Term in June 2020.

4. The questions presented in *Seila Law* are also presented in this case. *See* Bureau Opening Br. at 3 (Issues 1 and 2); New York Attorney General (NYAG) Opening Br. at 5 (Issues 1 and 2); Defendants' Opening Br. at 3 (Issues 1 and 2).

5. The Supreme Court's decision in *Seila Law* will therefore control this Court's resolution of two of the issues presented in this case.

6. In addition, *Seila Law* may obviate the need for this Court to resolve some or all of the remaining issues in this case.

7. For instance, the New York Attorney General's appeal presents the additional question of whether the district court had jurisdiction over the NYAG's state-law claims despite the district court's conclusion that the removal provision in the Bureau's organic statute, 12 U.S.C. § 5491(c)(3), was unconstitutional and could not be severed from the remainder of the statute. NYAG Opening Br. at 5. This question would be moot if, for instance, the Supreme Court holds that the removal provision can be severed from the remainder of the statute.

8. Likewise, both the Bureau and the NYAG argued that this Court should decline to review the issues presented by Defendants' purported cross-appeal. *See* Bureau Reply Br. at 31-33; NYAG Reply Br. at 20-21. And while Defendants argue that this Court should consider the issues identified in their cross-appeal as alternative grounds for affirmance, Defendants recognize that their cross-appeal is "protective," "conditional," and "should be addressed if the district court's constitutionality ruling is reversed." Defendants' Reply Br. at 1-2 (internal quotation marks omitted).

9. Accordingly, an adjournment of oral argument pending a decision by the Supreme Court in *Seila Law* will conserve judicial resources and aid this Court's consideration of this appeal.

10. I have consulted with counsel for the NYAG and Defendants prior to filing this motion. The NYAG does not take a position on the motion and does not intend to file a response. Defendants oppose this motion and intend to file a response.

WHEREFORE, the Bureau respectfully requests that this Court issue an order adjourning oral argument in these appeals until after the Supreme Court issues a decision in *Seila Law, LLC v. CFPB*, No. 19-7 (U.S.).

Dated: Washington, D.C.
October 22, 2019

/s/ Christopher Deal

Christopher Deal