

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

Index # 039747 CVN 2001

SEARS, ROEBUCK & CO.

Plaintiff

vs.

PHILLIP WEISS

Defendant

_____ /

REPLY TO PLAINTIFF'S VERIFIED REPLY

1. On October 12, 1998, Plaintiff filed a summons with the County Court, Broward County, State of Florida, case number 98-07007 (Exhibit 1).
2. Plaintiff also filed a complaint with the Broward County Court. Said complaint alleged that Defendant owed the Plaintiff \$4260.21 That is due with interest since June 10, 1998. (Exhibit 2)
3. On December 30, 1998, the Broward County Court issued a Final Judgment ordering that Plaintiff shall recover from Defendant the sum of \$4260.21 plus interests and costs making a total of \$4623.14. (Exhibit 3)
4. Defendant filed three motions to set aside the Final Judgment (Exhibits 4-6).
5. Copies of said motions were served on Plaintiff.

6. Plaintiff had full and fair opportunity to reply to said motions.
7. Defendant did not receive any reply from Plaintiff to said motions.
8. On November 14, 2001, the County Court, Broward County, Florida, issued an Agreed Order to Setting Aside Final Judgment. (Exhibit 7)
9. In said Agreed Order, the Broward County Court ordered and adjudged as follows:
 - A. That the Final Judgment is hereby set aside.
 - B. That this case now stands dismissed without prejudice.
10. Now, after having initiated litigation in Broward County, Florida, which led to a Final Judgment, the filing of motions to set aside said Final Judgment, and an order Setting Aside the Final Judgment, Plaintiff has chosen to litigate the same claim again in New York County. (Exhibit 8)
11. Plaintiff's decision to re-litigate is subjecting Defendant to needless and repetitive litigation.
12. Moreover, Plaintiff's claim, to wit, the Defendant owes Plaintiff a debt, is false.
13. Moreover, Plaintiff knew that said claim was already litigated in the Broward County Court.

14. Hence, Plaintiff has demonstrated a pattern of premeditated actions, which taken separately and together are oppressive and therefore constitute harassment.
15. Although said Broward County case was dismissed without prejudice, this does not allow Plaintiff unlimited right to re-litigate. Discussing the principle of *res judicata*, the United Supreme Court, in *Angel v. Bullington*, 330 U.S. 183 (1947), ruled that

It is a misconception of *res judicata* to assume that the doctrine does not come into operation if a court has not passed on the 'merits' in the sense of the ultimate substantive issues of litigation.

16. Pursuant to the United States Supreme Court's ruling in *Angel v. Bullington*, the doctrine of *res judicata* comes into operation in This matter even if the Broward County Court had not passed on the "merits" of the case in the sense of the ultimate substantive issues of the litigation.
17. For the foregoing reasons, Defendant PHILLIP WEISS respectfully requests that
- A. Plaintiff's demand for dismissal of Defendant's counterclaim be denied and
 - B. that Plaintiff's motion for judgment as demanded in Plaintiff's complaint be denied and

**C. that Plaintiff be barred from re-litigating said complaint
which has already been litigated in another Court and**

**D. that Defendant be granted judgment as demanded in the
counter complaint together with interest and the costs
and disbursements of this action.**

**This Reply to Plaintiff's Verified Reply is dated the _____ day of
_____, 2002.**

Respectfully,

**Phillip Weiss
Defendant**

Defendant hereby certifies that true and correct copies of the foregoing Reply to Plaintiff's Verified Reply were mailed on the _____ day of _____, 2002, by certified mail, return receipt requested, to:

SEARS, ROEBUCK & CO.
Plaintiff
45 Congress Street
Salem, MA 01970-5591

Rubin & Rothman, LLC
Attorneys for Plaintiff
1787 Veterans Highway
Islandia, NY 11749

Phillip Weiss
Defendant