YIKES: MSJ Granted On “Serial Plaintiff” TCPA Claims- Maybe Defendant Should’ve Taken Case More Seriously Tho

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As plaintiff Shelton filed a summary judgment motion for his claims under both TCPA and Pennsylvania Telemarketer Registration Act (“PTRA”), the court was apparently aware that Shelton had been a “serial plaintiff” with a searchable record of litigation efforts under the TCPA. Regardless, the court, granted his summary judgment motion concerning the TCPA claims and awarded him a total of $54,000 in statutory damages (the court found no private right of action under the PTRA, so Shelton could not prevail on his claims under Pennsylvania law). See Shelton v. FCS Capital LLC, Case No. 2:18-cv-03723-JDW, 2019 U.S. Dist. LEXIS 213179.

Interestingly, the truth behind the court’s decision, as the court mentioned in its order, was reasonably foreseeable “consequences” resulting from defendant’s own neglect of its obligations with the case. Defendant failed to respond to plaintiff’s discovery, which consisted of a single RFA but asked for all the admissions necessary to establish plaintiff’s claims under the TCPA, such as: no permission to contact, did not honor do-not-call requests, used ATDS, and knowingly and willfully made 18 calls to plaintiff’s cellphone in violations of the
TCPA (note that willful violations of the TCPA will entitle plaintiff to recover $1,500 for each violation of Section 227(b) and 227(c)). “If a party fails to ... properly address another party’s assertion of fact as required by Rule 56(c), the court may ... consider the fact undisputed for purposes of the motion; [and] grant summary judgment ... .” Fed. R. Civ. P. 56(e) (2)-(3).

Further, the defendant also neglected to respond to plaintiff’s summary judgment motion in its entirety. Alright, I may be able to understand that dealing with a “serial plaintiff” might not be something that defendant would enjoying doing, however, as the court stated, “[defendant]’s abdication of its obligations in this case has consequences,” and they really should’ve taken this more seriously.

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