TCPA Personal Liability Rule Narrowed?: Seventh Circuit Holds Mere Knowledge of Illegal Conduct is not Enough to Hold an Officer Personally Liable for TCPA Violation

Article By

Eric J. Troutman
Squire Patton Boggs (US) LLP
TCPA World

- Litigation / Trial Practice
- Communications, Media & Internet
- Corporate & Business Organizations
- 7th Circuit (incl. bankruptcy)

Tuesday, June 9, 2020

I have said over and over again that the rule allowing personal liability against officers and employees for TCPA violations committed by the companies they work for is one of the most unfair rules in American jurisprudence. Indeed, I called it “Busch League” in my big interview with Anthony Paronich on Unprecedented that just dropped last week.

While the Third Circuit Court of Appeal famously pushed back against the rule in City Select, the majority of district courts continue to hold that officers can be directly liable if they “personally participate” in a TCPA violation, whatever that means.

Well the Seventh Circuit Court of Appeals just shed a little light on the meaning of “personal participation” and it may help to end the rash of recent TCPA filings naming corporate employees/agents/directors/officers as parties.

In Arwa Chiropractic, P.C. v. Med-Care Diabetic & Med. Supplies, Inc., No. 19-1916,
2020 U.S. App. LEXIS 17731 (7th Cir. June 5, 2020) the appellate court affirmed entry of judgment in favor of a corporate officer defendant in a suit involving junk faxes. The district court had entered judgment for the defendant determining that Plaintiff had shown no more than that the Defendant knew about the unlawful faxes, but not that the defendant had actually participated in the sending of the faxes. The Plaintiff appealed arguing, in essence, that knowledge plus the ability to control the conduct of the company equals participation in the illegal conduct. The Seventh Circuit disagreed and concluded that knowledge alone was not enough to hold the officer personally liable.

In analyzing the issue the Court noted that some courts have been “critical” of the “personal participation” rule of direct liability. Nonetheless the Arwa panel elected not to directly set aside the rule and held merely that if “personal participation” forms the appropriate standard—a determination the court did not reach—the evidence presented by the Plaintiff did not raise to the level of evidence needed to show such “personal participation.” That is to say, whatever the standard might be—mere knowledge of misconduct is not sufficient for an officer to be held directly liable under the TCPA.

With the Arwa court refusing to take a position on “personal participation” the TCPA World remains somewhat rudderless on the issue. It is noteworthy, however, that no appellate court has yet affirmed the “personal participation” theory for TCPA liability and two separate courts of appeals have not declined to apply the test when the opportunity arose.

Perhaps, then, the era of district courts holding employees personally liable for acts taken within the scope of their job duties might be on the wane. We’ll keep an eye on this.

© Copyright 2020 Squire Patton Boggs (US) LLP

Source URL: https://www.natlawreview.com/article/tcpa-personal-liability-rule-narrowed-seventh-circuit-holds-mere-knowledge-illegal