Hello everyone! The Baroness here. I know it has been some time, but I’m back to give you an update on another recent interesting case – TCPA of course.

Don’t we all get tired of seeing the same serial plaintiff litigators over and over again? And it’s no surprise that they get better at surpassing the pleadings stage each time too. They get crafty with their pleadings and they do just enough to survive a motion to dismiss. Well, that is what happened here—somewhat!

In Christopher Laccinole v. Rocket Mortgage, LLC the Court granted in part Rocket...
Mortgage’s motion to dismiss and denied in part. Here’s why.

Christopher Laccinole, a serial litigator who has filed dozens of lawsuits, filed a complaint against Rocket Mortgage alleging violations of the TCPA (no surprise there). More specifically, Laccinole alleges Rocket Mortgage called him at least 14 times without his consent using an ATDS and the calls used an artificial or prerecorded voice in an effort to sell him a financial product. Lannicole further alleges he has never been a customer or client of Rocket Mortgage.

The Court quotes the famous Facebook definition of an ATDS, “To qualify as an ‘automatic telephone dialing system,’ a device must have the capacity to either store a telephone number using a random or sequential generator or to produce a telephone number using a random or sequential number generator.” The Court denies Rocket’s Mortgage’s motion to dismiss on the claims related to use of an ATDS. The Court stated, “[Lannicole] does not discuss the contents of the calls but describes how the calls conveyed an identical message in a uniform voice, rhythm, and intonation.” Additionally, the calls were frequent and repetitious. There were no other allegations regarding use of an ATDS. Notably, the Court even acknowledged some of Lannicole’s claims are “threadbare recitations” of the TCPA elements, however, the Court stated, claims based on allegations of the TCPA do not require the usual level of particularity. Ok.

But, when it came to Lannicole’s claims relating to the Do-Not-Call list, the Court found that these allegations do not meet the particularity and “mere recitations of the legal elements must be discarded.” At one level, threadbare recitations of the TCPA elements will get you passed a motion to dismiss, but mere recitations of the legal elements in a DNC claim will not. Know the difference. It appears that the standard is low here, but not low enough where simply reciting the elements will be sufficient.

Be aware of these serial litigators folks because they are becoming more seasoned at this and unfortunately, the courts don’t even take into account the fact that they filed dozens of suits before most of the time.

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National Law Review, Volume XII, Number 189

Source URL: https://www.natlawreview.com/article/rocket-crashes-serial-litigator-christopher-laccinole-defeats-rockets-motion-to