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Pennsylvania Court Grants Plaintiff's Motion for Summary Judgment that an Autodialer Violated the TCPA

Manue v. NRA Group., LLC, 1:15-CV-275 (W.D. Pa August 5, 2016)

At issue *Manue v. NRA Group*, is whether the 149 collection called made to plaintiff's cell phone by defendant were placed without human intervention in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 . In *Manue*, both parties brought motions for summary judgment as to whether the Mercury Predictive Dialer constitutes an automatic telephone system as defined by the TCPA.

The defendant argued in its motion for summary judgment that the Telephone Consumer Protection Act was inapplicable because (1) the telephone dialer was incapable of making a telephone call without the debt collector first hitting a key and (2) the telephone dialer is a complex piece of machinery that requires an expert explaining how the machine works. In the course of discovery, a debt collector for NRA Group explained that the predictive dialer places a series of calls in advance and the and then tries to predict when the next collection agent will hit a key. The Court denied the defendant's motion for summary judgment and granted plaintiff's motion in part.

In denying the defendant's motion for summary judgment, the Court relied on the Telephone Consumer Protection Act and authoritative guidance given by the Federal Communications Commission. The Court concluded that there was no genuine issue of material fact regarding whether Mercury Dialer constitutes an automatic telephone system and reasoned as follows:

NRA misconstrues the provenance and substance of Sarver's deposition testimony. Sarver explained therein that in predictive mode, Mercury Dialer "attempts to predict when the next [collection agent] . . . will hit F4" by placing a series of calls in advance. (Sarver Dep. 32:6-19). Sarver's statements illustrate that the F4 key merely signals an agent's availability, at which point Mercury Dialer transfers a preexisting live connection if one is queued. Sarver further testified that said predictive calls terminate automatically upon reaching an answering machine. (Id. 33:13-34:10). In this instance, no human involvement is required at any point during the call.

The court perceives a significant difference between predictive mode, one the one hand, and power and preview modes, on the other. In the latter operational settings, collection agents must affirmatively prompt Mercury Dialer to place each individual phone call. (See Sarver Dep. 34:14-35:8; Doc. 22 ¶ 31; Doc. 34 ¶ 31; Doc. 40 ¶ 19; Doc.

46-1 ¶ 31). Contrastively, it is clear that Mercury Dialer initiates calls in predicative mode without human intervention. (See Sarver Dep. 32:6-19, 33:13-34:10). NRA miscomprehends this key distinction and presents no evidence to the contrary.

The Court granted plaintiff's motion for summary judgment to the extent that the predictive dialer violated the TCPA. The Court denied the plaintiff's motion for summary judgment that the defendant willfully violated the TCPA. Treble damages are available under the Telephone Consumer Protection Act when a defendant violates the Act "willfully or knowingly. The Court stated that "[n]either the Act nor FCC guidance defines these terms. Courts have generally resolved this ambiguity by requiring evidence of volitional conduct for each element of liability, irrespective of any intent to transgress the Act's prohibitions." The Court concluded it is for a jury to determine whether the TCPA was willfully or knowingly violated.