

U.S. Supreme Court Rules That Unaccepted Settlement Offers and Offers of Judgment Can't End Consumer Class Action Lawsuits

PUBLISHED ON
January 26, 2016

Last week, the U.S. Supreme Court limited a tool that defendants had used to settle costly class action litigation through settlement offers and offers of judgment. In the case of *Campbell-Ewald v. Gomez*, the Court held that a defendant's rejected offer of full relief does not moot-*i.e.* end-the litigation.

Gomez filed a proposed class action lawsuit under the Telephone Consumer Protection Act (TCPA) alleging that Campbell-Ewald sent him unauthorized text messages. The TCPA prohibits the use of automated telephone calls without the prior consent of the telephone call recipient and allows successful plaintiffs to recover actual money damages or \$500 for each violation-triple that for willful violations.

Before Gomez filed a motion to certify the class, Campbell-Ewald made an "offer of judgment" under Rule 68 of the Federal Rules of Civil Procedure. Typically, defendants use Rule 68 offers of judgment to resolve class and collective action cases early in the process by making full-relief settlement offers to the named plaintiff before costly class-wide litigation ensues. If a plaintiff accepts the offer, judgment is entered and the plaintiff's claim is dismissed. If a plaintiff does not accept the offer, it is considered withdrawn but does not preclude a later offer. The plaintiff, however, must pay the court costs incurred after the initial offer if the judgment that the plaintiff finally obtains is less favorable than the rejected offer.

Campbell-Ewald's offer (\$1,503 per message that Gomez received, plus costs) would have provided full relief under the TCPA. Nevertheless, Gomez rejected the offer. Campbell-Ewald then filed a motion to dismiss the case, arguing the case became moot when Gomez rejected the full relief offer and that Gomez's class claims were also moot because he had not yet moved for certification of the class claims. Thus, Campbell-Ewald argued, there was no remaining "case or controversy" for the court to decide.

The case made its way to the U.S. Supreme Court, leaving the high court to decide what becomes of a case when a Rule 68 Offer of Judgment is *not accepted*. In a 6-3 decision authored by Justice Ruth Bader Ginsburg, the Court held that "an unaccepted settlement offer has no force" and, like other unaccepted contract offers, "creates no lasting right or obligation." In short, despite a full remedy offer, which federal courts previously have found extinguishes a live "case or controversy," the Supreme Court reasoned that the underlying dispute still exists, and the case goes on as if the offer had not been made. Both the majority and the dissenting opinions, however, left open the possibility that a defendant who *pays* the full remedy offer to the plaintiff, or *deposits it with the court*, may overcome the plaintiff's rejection of the offer and moot the underlying case. But the plaintiff's rejection of the full remedy offer, without more, does not end a case.

Although the case arose under consumer protection laws, it has strategic implications in employment class and collective action cases, particularly wage and hour cases brought under the Fair Labor Standards Act.

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