



Third Circuit Holds Roommate Has Standing To Assert TCPA Claim

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[Leyse v. Bank of America Nat. Ass'n](#), No. 14-4073N (3rd Cir. Oct. 14, 2015) After receiving a prerecorded telemarketing call on the landline shared with his roommate, Plaintiff filed a class action lawsuit, which was met with a Rule 12(b)(6) Motion to Dismiss. Of pertinence, is the U.S. Court of Appeals' holding that despite the undisputed fact Plaintiff's roommate was the subscriber and intended recipient of the call, Plaintiff had standing to prosecute a TCPA claim. Recognizing that consideration of who is the "called party" is relevant because prior consent of such an individual to receive robocalls provides a defense to liability, the Court of Appeals emphasized that "the paragraph captioned 'Private right of action' provides that a 'person or entity' may bring an action to enjoin violations of the statute and recover actual damages or \$500 in statutory damages per violation." The Court rejected the trial court's conclusion that Plaintiff lacked standing because he was an "unintended and incidental recipient" of the call, stating:

“Congress surely did not intend for, example, to enable a plaintiff to sue merely because she learned that a friend or neighbor had received a robocall. This common sense judgment is embodied in an interpretive doctrine of special importance here: the ‘presum[ption] that a statutory cause of action extends only to plaintiffs whose interests ‘fall within the zone of interests protected by the law invoked.’ [. . .] [I]t is clear that the Act’s zone of interest encompasses more than just the intended recipients of prerecorded telemarketing calls. It is the actual recipient, intended or not, who suffers the nuisance and invasion of privacy. This does not mean that all those within earshot of an unwanted robocall are entitled to make a federal case out of it. Congress’s repeated references to privacy convince us that a mere houseguest or visitor who picks up the phone would likely fall outside the protected zone of interests. On the other hand, a regular user of the phone line who occupies the residence being called undoubtedly has the sort of interest in privacy, peace, and quiet that Congress intended to protect.”

For more information on TCPA regulation and effects, contact [Burr & Forman](#) attorney, Joshua Threadcraft, [here](#).

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