



Ninth Circuit Rejects Argument “Prior Express Consent” Extended Only To Calls Regarding Problems With Online Transactions

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Roberts v. Paypal, Inc., No. 13-16304 (9th Cir. Oct. 20, 2015) Pending before the Court was the trial court’s Order granting summary judgment in Defendant’s favor concluding that Plaintiff provided “prior express consent” to receive text messages from Defendant by knowingly providing his phone number. The Court of Appeals rejected Plaintiff’s argument that his consent was limited, stating “[u]nder the FCC’s interpretation, Roberts expressly consented to text messages from PayPal when he provided PayPal his cell phone number. Even if Roberts believed that PayPal would only contact him on his cell phone about problems with his online transactions, that limitation did not apply to PayPal’s use of his number because he failed to communicate it to PayPal.” The Court of Appeals further rejected Plaintiff’s argument stating “Roberts’ contention that the FCC’s 1992 interpretation limits the consent expressed by release of a phone number to ‘normal business communications’ or ‘normal, expected or desired communications,’ is without merit. The FCC’s citation to a House Report mentioning ‘normal business communications’ was not meant as a limitation to its interpretation of ‘prior express consent,’ but merely as ‘support[] for that interpretation.”

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