

PUBLICATION

SCOTUS: Unaccepted Settlements and Judgment Offers Don't Moot a Plaintiff's Case

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The U.S. Supreme Court held Tuesday in a 6-3 decision in *Campbell-Ewald Company v. Jose Gomez* that an unaccepted settlement offer or offer of judgment does not moot a plaintiff's case. In this case, the U.S. Navy contracted with Campbell-Ewald Company (Campbell) to work on a recruiting campaign for the Navy. Through a subcontractor, Campbell identified 100,000 phone numbers to send text messages to for recruitment purposes. The list was meant to be populated by 18-24 year olds who 'opted in' to receive solicitation from the Navy. Included in this list was Jose Gomez, who did not 'opt in' to receive solicitations from the Navy. Gomez filed a nationwide class action, "alleging that Campbell violated the Telephone Consumer Protection Act (TCPA), which prohibits 'using any automatic dialing system' to send a text message to a cellular telephone, absent the recipient's prior express consent." He sought treble statutory damages and an injunction against Campbell's involvement in unsolicited messaging.

Before Campbell filed a motion for class certification, the company offered to settle Gomez's claim for treble the statutory damages plus court cost and filed an offer of judgment pursuant to Federal Rule of Civil Procedure 68. Gomez did not accept the offer. Campbell argued first that the offer mooted Gomez's individual claim by providing him with complete relief, and second that Campbell as a contractor of the federal government enjoyed sovereign immunity from suit under the TCPA. The District Court agreed with Campbell's sovereign immunity argument and granted summary judgment. The Court of Appeals for the Ninth Circuit reversed the summary judgment entered for Campbell, disagreeing with the District Court's ruling on the immunity issue. The U.S. Supreme Court then granted certiorari to resolve a disagreement among the Courts of Appeals over whether an unaccepted offer can moot a plaintiff's claim, thereby depriving federal courts of Article III jurisdiction.

In the Court's opinion Justice Ginsburg stated, "Gomez's complaint was not effaced by Campbell's unaccepted offer to satisfy his individual claim," and that, "Under basic principles of contract law, Campbell's settlement bid and Rule 68 offer of judgment, once rejected, had no continuing efficacy. Absent Gomez's acceptance, Campbell's settlement offer remained only a proposal, binding neither Campbell nor Gomez." The Court also looked to Rule 68 itself, determining that the Rule "hardly supports the argument that an unaccepted settlement offer can moot a complaint. An offer of judgment, the Rule provides, 'is considered withdrawn' if not accepted within 14 days of its service."

Justice Roberts issued a dissent which plainly stated, "the District Court found that Campbell agreed to fully satisfy Gomez's claims. That makes the case moot, and Gomez is not entitled to a ruling on the merits of a moot case." He went on to state, "When a plaintiff files suit seeking redress for an alleged injury, and the defendant agrees to fully redress that injury, there is no longer a case or controversy for purposes of Article III."

It's this line of thinking that those in the consumer lending industry rely on when they utilize a settlement as a tool to avoid the cost associated with protracted litigation. Because if a company is willing to make a party whole, why should they still be subject to the costs of litigation simply because the opposing party wants to litigate

The consumer lending industry watched this matter with the hopes that the Supreme Court would take steps to curtail the amounts of abusive actions filed under the TCPA, but unfortunately, they did not. With plaintiffs' firms watching this matter just as closely, it would be reasonable to expect a rise in TCPA actions in the future.