

Court Issues Sua Sponte Dismissal of Serial Plaintiff's Complaint

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The Eastern District of Pennsylvania recently dismissed a serial TCPA plaintiff's complaint *sua sponte* because the court concluded that it did not have personal jurisdiction over the defendant. [*Perrong v. REWeb Real Estate, LLC*, No. CV 19-4228, 2020 WL 4924533 \(E.D. Pa. Aug. 21, 2020\)](#). The case demonstrates that courts are becoming increasingly frustrated with "professional plaintiffs" who repeatedly file TCPA claims against businesses and pressure them "to settle independent of the merits of the case." *Id.* at *3.

Andrew R. Perrong, a prolific TCPA plaintiff, filed a TCPA complaint against REWeb Real Estate, LLC and its two principal owners. *Id.* at *1. Perrong alleged that he received three unsolicited text messages from the defendants. *Id.* The texts were allegedly addressed to an "individual named Devin" and they discussed potential real estate deals in the Florida area even though Perrong is a Pennsylvania resident. *Id.* at *2. Perrong allegedly responded to the texts to identify the sender and he supposedly received a reply text from defendants asking to schedule a phone call. *Id.* Ultimately, Perrong called defendants' phone number, connected with one of the individual defendants and asserted a claim for damages. *Id.* Perrong subsequently filed a complaint against defendants alleging TCPA violations. *See id.*

Defendants, proceeding *pro se*, filed an answer denying Perrong's allegations and a motion to dismiss asserting a lack of jurisdiction. *Id.* In their Answer, defendants asserted that the texts were sent accidentally to the wrong number in an attempt to communicate with the owner of a specific property in Florida, using contact information obtained from a published directory. *Id.* They also asserted that they limit their business activities to Florida. *Id.* While observing that defendants' Answer was detailed – noting that "the specificity and unambiguous nature of the denials stands out" in contrast to "the general and often evasive nature of many answers to civil complaints" – the court concluded that defendants' motion to dismiss was "conclusory." *Id.* However, the court held that a "federal court is bound to consider its own jurisdiction preliminary to consideration of the merits." *Id.* (quoting *Trent Realty Assocs. v. First Fed. Sav. & Loan Ass'n*, 657 F.2d 29, 35 (3d Cir. 1982)). Thus, the court raised the issue of its personal jurisdiction over defendants *sua sponte*. *Id.* The court also asked Perrong to submit an affidavit setting forth the factual basis for his jurisdictional allegations. *Id.*

Perrong filed the requested affidavit and simultaneously filed a motion to strike defendants' answer. *Id.* Perrong argued that defendant REWeb, a corporation, could not represent itself *pro se*. *Id.* The court denied his motion to strike the answer and it instead considered the jurisdictional issues *sua sponte*. *Id.*

The court determined that it did not have personal jurisdiction over the defendants because "the contacts between [d]efendants and Pennsylvania [were] marginal" and the court was "not persuaded that subjecting them to jurisdiction [in Pennsylvania] would be consistent with 'traditional notions of fair play and substantial justice.'" *Id.* at *2. The court observed that defendants' answer stated that they "limit[ed] their activities to Southeast Florida, where they are licensed, and conduct no direct business activities in Pennsylvania." *Id.* Moreover, defendants asserted that "the specific person" they were trying to contact was the "owner of a property in Cape Coral, Florida, an area in which [defendants] regularly do business." *Id.* Defendants' answer also stated that Perrong "demanded \$7000 in settlement, told them that they would have to hire a lawyer, further stating that his demand would increase if they did not immediately capitulate." *Id.*

Obviously troubled by Perrong's litigation tactics, the court noted that his affidavit in support of jurisdiction was "long on argument and short on facts." *Id.* The court found that there was "no support for [Perrong's] allegation that [d]efendants purchase or own homes in [Pennsylvania]." *Id.* Moreover, the court questioned Perrong's allegation that defendants had a "'brisk business' in Pennsylvania," as the "most that [Perrong could] show" was a listing on defendants' website for "a property in Naples, Florida owned by a Pennsylvania resident." *Id.* Perrong also tried to "characterize the text messages he received as evidence that [d]efendants were masquerading as investors seeking to buy property in Pennsylvania." However, the court "[did] not find that to be a reasonable characterization of the texts." *Id.*

Perrong also filed a motion seeking leave to conduct jurisdictional discovery. *Id.* at *3. The court denied the motion and held that the facts Perrong "advanced" "[did] not justify an inference that allowing discovery [would] demonstrate a basis for jurisdiction." *Id.*

In reaching this conclusion, the court expressed frustration with Perrong's conduct in the litigation. The court observed that it "remain[ed] troubled that [Perrong] would unambiguously allege in the [c]omplaint that [d]efendants conduct business here 'by purchasing and owning property' in the absence of any factual support." *Id.*

Moreover, the court stated that it was guided by the considerations of proportionality and burden enshrined in Federal Rule of Civil Procedure 26(b)(1). *Id.* The court held that these concerns weighed against granting the motion for jurisdictional discovery because such a ruling would require defendants to expend funds to retain counsel and would also "impose further transactional costs."

Importantly, the court asserted that both types of costs "are consistent with [Perrong's] aggressive style of litigation, and a concern arises that this represents a strategy of pressuring these defendants to settle independent of the merits of the case." *Id.* The court held that this concern was a "separate basis" for its decision to deny jurisdictional discovery "given the record in this case." *Id.*

The decision highlights that at least some courts are becoming increasingly skeptical of professional TCPA plaintiffs and their attempts to extract quick settlements from businesses. Moreover, concerns regarding the "aggressive" litigation tactics that such plaintiffs employ may lead courts to heighten their scrutiny of TCPA allegations presented in court filings. Unlike the defendants in this case, companies sued or threatened by serial TCPA plaintiffs should immediately retain competent legal

counsel to ensure that litigation threats and active litigation matters are professionally managed.

Parties seeking further analysis of the legal issues that arise in the context of professional TCPA plaintiffs should review our previous [blog post](#) on the subject. In this post, we address why professional plaintiffs suffer no damages and lack standing to file TCPA lawsuits if they entice companies to call or text them to facilitate new lawsuits.

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