

Christopher Laccinole Smacked Down: Court Grants Summary Judgment to Collections Law Firm in TCPA Wrong Number Case

Article By:

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Has had his [ups](#) and [downs](#) in TCPAWorld.

He famously defeated Rocket Mortgage's motion to dismiss a TCPA suit not long ago, but also lost a case on standing grounds last month when revelations of his eight burner phones came to light.

But that was a standing motion. Today's case is far more substantive.

In *Laccinole v. Rausch, Sturm, Israel, Enerson & Hornik, LLC* 2022 WL 16948612 (D. R.I. Nov. 15, 2022) a debt collecting law firm allegedly used an ATDS to call a wrong number—Christopher Laccinole's number at that. What rotten luck!

Laccinole sued under the TCPA, the Rhode Island Deceptive Trade Practices Act, common law claims, and even brought a RICO charge against the law firm—all arising out of 15 or so unwanted calls. (Talk about overplaying your hand.)

So there are several components to the ruling. All of them reflect more that the Court did not *like* Laccinole's claims more than that Laccinole *lacked* claims.

For instance, the TCPA suit was dismissed because the Court found LiveVox HCI is not an ATDS. On the one hand—great! On the other hand, the Court did not really even address *Facebook*. Instead it relied on a host of *pre-Facebook* decisions in reaching its conclusion that HCI is not an ATDS. That is what is it.

The Court also dismisses Laccinole's DNC claim because the calls at issue were debt collection calls—so obviously they will not count as solicitations for DNC purposes.

One of the interesting rulings, however, is that Laccinole is not a *consumer* for purposes of Rhode Island's Deceptive Trade Practices Act. Under most statutes a consumer is anyone who is using a phone or receives a message intended for consumer purposes. But the *Laccinole* court holds a "consumer" requires a transaction between the caller and the called party. Since Laccinole never entered into any transaction with the law firm he is not a consumer. Then again, that means NO ONE

receiving a wrong number call in Rhode Island can bring suit under the statute—something to keep in mind.

The court also found that the dozen or so calls at issue did not intrude upon Laccinole's privacy: *It is only when the telephone calls are repeated with such persistence and frequency as to amount to a course of hounding the plaintiff, that becomes a substantial burden to his existence, that his privacy is invaded.*

Let's hope the "substantial burden to his existence" test catches fire!

Finally, the Court rejected all of Laccinole's many and varied FDCPA claims. In essence the Court concluded that because the law firm was trying to reach a debtor and Laccinole never asked for the calls to stop or informed the firm it was calling the wrong number the firm did not violate the FDCPA.

My primary take away from this case is that courts are getting tired of repeat players like Laccinole and are willing to make quick work of long count cases at the summary judgment phase. Nice work by the defendant law firm here pushing the case all the way and not just paying the guy off.

Happy Hump Day TCPAWorld.

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