

CLEVER: Defendants Earn Dismissal in Brandon Callier TCPA Suit Using Personal Jurisdiction Argument

Article By:

Eric J. Troutman

I recall from my youth a rather dull phrase “there is more than one way to skin a cat.”

Not sure where that saying arose and I really don’t care for it.

But there is more than one way to be rid of a TCPA case, as a pair of Defendants recently demonstrated against repeat-litigator Brandon Callier.

In *Callier v. Wide Marchant Investment, Inc.*, 2023 WL 3167440 (W.D. Tex. April 27, 2023) two defendants were sued related to outbound marketing calls made by a third defendant Synergy Financial.

Callier’s theory was that Synergy made the calls on behalf of the two moving defendants, so they should also be included in the suit. But the moving defendants argued they did not make the calls at issue and were not vicariously liable for the calls so the case should be dismissed for lack of *personal jurisdiction*.

Pause.

There are a lot of ways to wield the “we didn’t make the calls” sword at the pleadings stage, and that’s what we’re studying here.

First, you can simply move to dismiss arguing a lack of valid allegations in the complaint. On this approach—probably the most common—no extrinsic evidence is required. A defendant simply argues the allegations are insufficient to state a claim.

There is upside to a straight motion to dismiss—if the case is dismissed it may never come back. But there are downsides— the allegations may actually be sufficient (even if untrue) and the Plaintiff might be granted leave to add allegations (again, even if untrue.)

Second, a Defendant facing a well-pleaded complaint—i.e. one that has sufficient, but false, allegations to demonstrate vicarious liability— may simply choose to answer and then file a summary judgment motion. This, again, is quite common.

The upside is that if a Defendant wins the MSJ they win for keeps— substantive ruling in their favor and the case is dead forever. On the other hand, getting to summary judgment means going through an expensive discovery phase and potentially class certification—which is really pricey.

Third, Troutman Amin, LLP lawyers have pioneered an Article III standing argument in these circumstances— using a lack of evidence related to any conduct directing the calls to the “fairly traceable” prong of the standing rules.

The upside here is that you can use a quick killshot to dispense of a case at the pleadings stage using evidence—similar to an MSJ—without having to wait until later in the case. But in some jurisdictions the suit *might* be pursued in state court—although the ruling on a meritorious defense should dissuade such further filings.

Fourth, is the trick the lawyers in *Callier* used. Rather than attack the case substantively they simply argued the Court didn’t have jurisdiction over the Defendants. To prevail on that argument they needed to prove the same things—i.e. that vicarious liability did not exist—but the result is merely that the case could not proceed in that specific federal court. It could be re-filed elsewhere.

The *Callier* defendants used the trick to good effect— the Court granted the motion to dismiss and set the defendants free of the suit. While *Callier* may re-file against them elsewhere, that seems very unlikely since he doesn't have a lawyer and never litigates out of TX to my knowledge.

In dealing with a guy like *Callier* a jurisdictional attack is actually quite clever as *Callier* is unlikely to re-file elsewhere. With claimants who have sophisticated counsel, however, personal jurisdiction motions usually just result in a new filing elsewhere.

As I like to say, people aren’t special little snowflakes, but TCPA cases are. There is no cut and dry routinized way to deal with a TCPA case. This stuff is not cookie cutter. And the right tool needs to be used in the right situation—even where the underlying arguments are the same.

Always here to help.

© 2025 Troutman Amin, LLP

National Law Review, Volume XIII, Number 122

Source URL: <https://natlawreview.com/article/clever-defendants-earn-dismissal-brandon-callier-tcpa-suit-using-personal>