

TEXAS TOAST?: Debt Collector Stuck in ATDS TCPA Case After Another Thin Ruling from a Texas Court

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Something strange is going on down in Texas right now.

For the second time this week an extremely thin ruling has come down in a TCPA suit trapping a defendant in a case with little rationale.

Well today, a court spent little more time to keep a debt collector trapped in a TCPA case on an ATDS claim— a pretty rare ruling these days.

In *Nkadi v. Arcon Credit Solutions*, 2024 WL 4652828 (S.D. Tex. Oct. 31, 2024) the court denied the motion by Defendant to dismiss the Plaintiff's TCPA claim finding sufficient allegations existed to state an ATDS claim.

Here is the Court's analysis on the subject:

*The Court finds that Plaintiff did allege that Defendants used technology regulated by the TCPA. Plaintiff states that "the lack of Plaintiff's obligations or connection to the debt at issue illustrates that Plaintiff's cellular phone number was roped into Defendants' collection efforts through technology and calling processes that are prohibited by the TCPA." (Doc. No. 13 at 4 5). Moreover, courts within the Fifth Circuit have found that, "no plaintiff will have personal knowledge of the defendant's telephone system at the pleadings stage. Only the defendant has that knowledge." Atkinson v. Pro Custom Solar LCC, No. SA-21-CV-178-OLG, 2021 WL 2669558, at *1 (W.D. Tex. June 16, 2021). Thus, at this stage, Plaintiff need only plead enough facts to proceed with discovery. The Court finds that she has.*

Hmmm.

A one line allegation that a phone number was "roped into" collection through a "prohibited" calling process is sufficient to survive a motion to dismiss?

In Texas?

I mean... wow.

Notably debt collectors have enjoyed a solid string of victories in TCPA cases of late, with many courts concluding it is not plausible a debt collector would use a random-fire dialer to collect debts. (Notably the Supreme Court does not require random-fire capabilities to qualify as an ATDS but many courts do regardless.) So this ruling really stands out from the crowd—and not in a good way.

The take away here is that TCPA ATDS cases may still survive the pleadings stage even in contexts where an ATDS (depending on the applicable definition) was likely not used.

Will keep an eye on this.

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