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ARTICLES & INSIGHTS

ABOUT THE AUTHOR

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and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises a broad range of law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

Professional TCPA Plaintiff Doesn't Have Standing to Bring Claims

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Professional plaintiffs may need to reconsider their business strategy in the wake of the Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). In *Stoops v. Wells Fargo Bank, N.A.*, a consumer bought and activated at least 35 prepaid cell phones with the hope on capitalizing on wrong number calls. The plaintiff readily admitted that she purchased the phones for the purpose of filing lawsuits under the TCPA and selected locations in Florida as the assigned locations (and corresponding area codes) "because there is a depression in Florida" where "people would be usually defaulting on their loans or their credit cards." *Stoops*, C.A. No. 3:15-83, 2016 U.S. Dist. LEXIS 82380, *2 (W.D. Pa. Jun. 24, 2016). When the plaintiff received a series of calls from Wells Fargo's home mortgage group, the plaintiff filed suit alleging violations of the TCPA. Through the course of discovery, the plaintiff admitted that she was "doing" TCPA violations as a business and had a shoebox full of burner phones for the sole purpose of "suing clients like yours, Wells Fargo, for violating the TCPA." *Id.* at * 32.

On summary judgment, the court addressed the question of whether the plaintiff had standing to bring TCPA claims. Relying in part on the Supreme Court's decision in *Spokeo* and in part on the purpose of the TCPA, the court granted summary judgment in favor of the bank. In doing so, the court concluded that the plaintiff had neither constitutional nor prudential standing to bring claims under the TCPA.

Where, as here, the plaintiff admits that she files TCPA actions as a business, the plaintiff's "privacy interests were not violated when she received calls from Defendant. Indeed, Defendants' calls "[did] not adversely affect the privacy rights that {the TCPA} is intended to protect...Because Plaintiff has admitted that her only purpose in using her cell phones is to file TCPA lawsuits, the calls are not "a nuisance and an invasion of privacy." *Id.* at * 34 (internal citations omitted). Moreover, the court concluded that Plaintiff did not suffer an injury in fact based upon any violation of the plaintiff's economic rights. While the court was dismissive of defendant's argument that there could be no injury in fact absent some allegations of actual damages, the court nonetheless held that "[b]ecause Plaintiff has admitted that her only purpose in purchasing her cell phones and minutes is to receive more calls, thus enabling her to file TCPA lawsuits, she has not suffered any economic injury." *Id.* at * 38.

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

Moreover, the court held that the Plaintiff did not have prudential standing because her interests were not within the zones of interests protected by the TCPA. "Because Plaintiff does not have "the sort of interest in privacy, peace, and quiet, that Congress intended to protect, the Court finds that she has failed to establish that the injury she complains of "falls within the zone of interests sought to be protected by the statutory provision whose violation forms the legal basis for [her] complaint." *Id.* at * 47-48.

The case bears consideration for a couple of reasons. First, defense counsel did its homework and was aware that the plaintiff was a serial litigant. Secondly, the case appears to have been won at the deposition stage where defense counsel elicited testimony as to the number of burner phones plaintiff had and plaintiff's business plan. Finally, the case provides an even more expansive perspective of standing as a defense and broadens the defense beyond constitution standing.

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