



COMMENTARY
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Agent Actions Don't Equal Personal Jurisdiction in Telephone Consumer Protection Act Case

IN SHORT

The Situation: A federal court in California recently considered whether it had jurisdiction over defendants in a class action under the Telephone Consumer Protection Act ("TCPA") based on the presence in California of the defendants' agent, which had developed the platform used to generate the allegedly unlawful text at heart of the lawsuit.

The Result: The court determined that there was no jurisdiction over the defendants, holding that there was insufficient evidence to establish that the acts of a business associate of the defendants conferred jurisdiction over the defendants.

Looking Ahead: This ruling could create a precedent making it more difficult for plaintiffs to assert jurisdiction in TCPA cases.

The Facts

In *Castillo v. Caesars Entertainment Corp. et al.*, the plaintiff brought a putative class action in the United States District Court for the Northern District of California against defendants Caesars Entertainment Corporation and Desert Palace, LLC (collectively, "Caesars"). The plaintiff, who resides in Los Angeles, received a text message about 30 minutes after he checked into the Caesars Palace hotel in Las Vegas. At the time he received the text message, he had not authorized Caesars to send marketing-related text messages, according to the complaint. Castillo thereafter filed the putative class action complaint.



The court found that although the 'current state of the law is not entirely clear on the issue of whether and, if so, when an agent's contacts may be attributed to its principal for jurisdictional purposes,' the plaintiff nevertheless failed to make out a prima facie case of specific jurisdiction.



The Law

A primary issue the court considered was whether it could exercise personal jurisdiction over Caesars. Castillo did not claim that the court had general jurisdiction over Caesars, so the court only had to consider whether specific jurisdiction existed in the Northern District of California. In answering that question, the court noted that a "critical element of specific jurisdiction is that the defendant must have purposely availed itself of the privilege of conducting activities in the forum state or purposely directed its activities toward the forum state" based on prior caselaw.

The court noted that "Caesars, which is located in Nevada, did not take any action itself in California" and that "its conduct was not aimed or directed at California." The jurisdictional issue, therefore, came down to the question of whether another entity, GoMoment, "took action" in California on Caesars' behalf that would confer jurisdiction over Caesars in California. GoMoment was the California-based company that developed the software platform used to generate the message to the plaintiff.

The court found that although the "current state of the law is not entirely clear on the issue of

whether and, if so, when an agent's contacts may be attributed to its principal for jurisdictional purposes," the plaintiff nevertheless failed to make out a prima facie case of specific jurisdiction. While GoMoment assisted Caesars in developing and maintaining the platform used to transmit the allegedly unlawful text, "nothing in the complaint indicates that GoMoment played anything more than this very limited role" and that the "actual implementation of the platform and the use of the platform were all done by Caesars in Nevada." Given, among other things, the "attenuated" role of GoMoment in the effectuation of the contact with the plaintiff, the court concluded that there was no jurisdiction in the district court over Caesars. Finally, rather than dismissing the action, the court transferred the matter to the District of Nevada.

TWO KEY TAKEAWAYS

1. The *Castillo* decision may assist a TCPA defendant in a jurisdiction where the defendant does not have sufficient contacts to confer personal jurisdiction and where the plaintiff therefore attempts to rely on the actions of a purported "agent" of the defendant as a basis for jurisdiction.
2. The decision in *Castillo* is consistent with other recent decisions where courts have rejected plaintiffs' efforts to widely assert jurisdiction in TCPA matters.



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