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Luring Robocalls For Profit Won't Win TCPA Suit, Judge Says

By **Nadia Dreid**

Law360 (October 26, 2022, 7:03 PM EDT) -- Buying multiple prepaid cellphones in the hopes of getting an illegal robocall and suing under the Telephone Consumer Protection Act is a business model that won't get you far in one Rhode Island federal judge's court, according to his recent opinion.

U.S. District Judge John J. McConnell Jr. handed summary judgment Wednesday to the International Union of Police Associations, which had been sued by frequent Telephone Consumer Protection Act plaintiff Christopher Laccinole after buying the union's argument that Laccinole was essentially operating as a business and was not an aggrieved consumer.

"Even taken in the light most favorable to Mr. Laccinole, the record shows that it is undisputed that Mr. Laccinole invites these phone calls and uses burner phones and the calls he records from them to file lawsuits," the judge wrote. "As such, the [International Union of Police Associations] is entitled to judgment as a matter of law."

Essentially, Judge McConnell bought the police union's argument that Laccinole is not a consumer and therefore doesn't have standing under the Telephone Consumer Protection Act. By buying multiple inexpensive prepaid cellphones — which the court repeatedly refers to as "burner phones" — and not giving the number out, only using them to take recorded calls from possible telemarketers, the union argued that Laccinole was inviting the calls.

To bolster its argument, the union pointed toward testimony Laccinole gave in another one of his pro se cases — he's filed hundreds, according to the opinion — about his phone habits. He has a personal cellphone, a work cellphone and a landline, and he doesn't use any of his eight prepaid phones to call anyone or give out the numbers, according to his testimony.

He said in that case that his goal was to make sure that the "scam [political action committees] start following the Telephone Consumer Protection Act." According to the court, he has also argued in the past in a bid to get another suit remanded to state court that the federal court didn't have jurisdiction because Laccinole didn't have standing, citing that he wanted the calls.

But in another part of the opinion, Judge McConnell says it's too late for Laccinole to lean on his status as a pro se plaintiff in this instance when he sought to have all the police union's responses from the requests for the admissions process to be considered admissions. The pro se plaintiff argues that they didn't respond quickly enough, which means the court should assume they admitted to everything Laccinole put before him, but the judge wasn't buying it.

That issue would have needed to have been raised earlier in the form of a motion to strike, the judge said, which Laccinole would know because he's already filed two in the instant case.

"Since at least 2014, judges of this court presiding over cases that Mr. Laccinole has brought here have observed that 'he is a very sophisticated pro se plaintiff,'" the judge said. "At this point, eight years and hundreds of lawsuits later, Mr. Laccinole's reliance on this status as a pro se litigant falls flat."

Christopher Laccinole is represented by himself.

The International Union of Police Associations is represented by Brian C. Newberry of Lewis Brisbois Bisgaard & Smith LLP and Patrick T. Kane of The Bernhoft Law Firm SC.

The case is Laccinole v. International Union of Police Associations, case number 1:21-cv-00240, in the U.S. District Court for the District of Rhode Island.

--Editing by JoVona Taylor.

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