Consumer Finance Litigation

U.S. Supreme Court Rules That an Unaccepted Settlement Offer or Offer of Judgment Does Not Moot a Plaintiff's Individual or Class Action Case

Action Item: The U.S. Supreme Court clarifies the split among the circuits and holds that an unaccepted Federal Rule of Civil Procedure 68 offer and unaccepted settlement offer neither moots an individual or class claim. But the court leaves open the possibility that by tendering full recovery, a defendant could still moot a plaintiff's claim.

In a 6-3 decision in *Campbell-Ewald Co. v. Gomez,* the United States Supreme Court held that an offer of judgment under Federal Rule of Civil Procedure 68 neither moots an individual claim nor a putative class claim.[1] The majority grounded its decision in contract law, finding an unaccepted offer of judgment, just like an offer to contract, is a legal nullity.

Summary of Facts and Case Background

Gomez commenced the putative class action alleging that defendant Campbell-Ewald sent text messages to him without his consent. Gomez brought suit under the Telephone Consumer Protection Action 47 U.S.C. §227(b)(1)(A)(iii)

("TCPA"). Under the TCPA, a claimant may recover "actual monetary loss" or $500.00 for each violation—whichever is greater—and injunctive relief for unauthorized text messages. Damages may be trebled if the violation is willful or knowing.

Based on the facts alleged by Gomez, the most he could receive for his individual claim was $1,500 per text message and injunctive relief, plus the cost of filing the suit. Before the deadline to file a motion for class certification, the defendant filed an offer of judgment pursuant to Federal Rule of Civil Procedure 68 ("Rule 68 Offer"), offering to settle the individual claim for costs, $1,503 per message that Gomez could show he received, and a stipulated injunction. The defendant's offer of judgment went "unaccepted."

Thereafter, the defendant moved to dismiss the case pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. The defendant argued that no Article III controversy remained because its offer mooted Gomez's

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individual claim. Further, the defendant argued that because Gomez's individual claim was moot, the putative class' claims were also moot. The district court denied the motion and the Ninth Circuit agreed that the case remained live.

Supreme Court Decision

In affirming the Ninth Circuit's holding, Justice Ginsberg writing for the majority held that Gomez's complaint was not "effaced by Campbell's unaccepted offer to satisfy his individual claim." Article III of the Constitution limits federal-court jurisdiction to "cases" and "controversies." The Supreme Court has interpreted this to mean that an "actual controversy" must exist at all stages of the litigation. If at any time an intervening circumstance deprives the plaintiff of a "personal stake in the outcome of the lawsuit," the action must be dismissed as moot. But "as long as the parties have a concrete interest, however small, in the outcome of the litigation, that case is not moot."[2]

Relying on and adopting Justice Kagan's dissent opinion in *Genesis HealthCare Corp. v. Symczyk,* 133 S. Ct. 1523 (U.S. 2013), a case in which the Supreme Court chose not to take an affirmative position on the question of mootness, the majority now held that when a plaintiff rejects a settlement offer, regardless of how good the terms are, the interest in the lawsuit remains as it was before the offer. The majority relied upon tenets of contract law, finding that a Rule 68 Offer is no different than any other contract offer. Once rejected, the settlement offer "had no continuing efficacy." Thus, the parties remained adverse and had an actual controversy in the litigation.

Chief Justice Roberts, writing for the dissent, stressed that the holding of the majority is limited to the facts of this case and only applies to an *offer* for complete relief, not when there is *payment* of complete relief, *i.e.,* if the defendant had actually paid the sums offered. The majority agreed that its opinion did not address the situation where "a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount."

Conclusion

While the *Gomez* decision attempts to resolve the split among the circuits and holds that an unaccepted Rule 68 Offer and unaccepted settlement offer neither moots an individual or class claim, there may still be an opportunity for early litigation payments to plaintiffs to moot class actions. As Chief Justice Roberts said, "This court leaves that question for another day – assuming there are other plaintiffs out there who, like Gomez, won't take 'yes' for an answer."

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1. http://www.supremecourt.gov/opinions/15pdf/14-857_8njq.pdf

2. The Supreme Court also held that a federal contractor acting on the Navy's behalf (Campbell) does not entitle the federal contractor to immunity from suit for a violation of the Telephone Consumer Protection Act.

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