Trial

TOP STORY

SEVENTH CIRCUIT HOLDS UNACCEPTED OFFER LETTER DOES NOT BAR SUIT

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In April 2016, Xavier Laurens sued Volvo individually and on behalf of a class of others similarly situated under the Class Action Fairness Act, alleging that Volvo's misleading marketing led him to purchase a

hybrid vehicle with gas mileage well below what had been advertised. While Laurens was the named plaintiff, only his wife, Khadija Laurens, was listed on the vehicle purchase agreement and title.

In June 2016, Khadija Laurens received a letter from Volvo offering her a "full refund upon return of the vehicle." Volvo then moved to dismiss the lawsuit, arguing that Xavier Laurens lacked standing because he was not the purchaser and had not been injured. The couple responded by amending the complaint to add Khadija. Volvo filed another motion to dismiss under Fed. R. Civ. P. 12(b)(1), claiming that Khadija Laurens also lacked standing because the letter had offered complete relief for her *before* she filed suit. The district court agreed and dismissed the action.

Reversing, the Seventh Circuit held that an unaccepted pre-litigation offer does not deprive a plaintiff of her day in court. The court applied the standard the U.S. Supreme Court outlined in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), which evaluates standing by determining whether a plaintiff suffered an injury in fact that is fairly traceable to the defendant's conduct and likely to be redressed by a favorable judicial decision. The Seventh Circuit also noted that when a defendant raises a factual challenge to standing, the plaintiff bears the burden of proving standing by a preponderance of the evidence.

The court observed that the second and third elements of the *Spokeo* test—causation and redressability—were not challenged by Volvo and that the plaintiffs' allegations that Volvo engaged in false advertising and caused them financial harm that could be satisfied by a judgment appeared sufficient. The court then returned to the first element of the test, analyzing whether the plaintiffs had suffered an injury in fact.

The court found that while Xavier alone did not have standing in federal court, the case could continue because Khadija did. As the purchaser of the car, she suffered a financial injury and because she did not accept Volvo's offer, her injury-in-fact from Volvo's alleged misrepresentations remains unredressed. The court cited the Supreme Court's reasoning in *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016), noting that *Campbell-Ewald*'s "core lesson is that unaccepted contract offers are nullities; settlement proposals are contract offers; and therefore unaccepted settlement proposals are nullities." The court remanded the case for further proceedings, including a determination of whether the plaintiffs also showed standing for injunctive relief.

New York City consumer protection attorney Annika K. Martin noted this decision validates the important role that consumers play in monitoring corporate behavior. "As the Seventh Circuit recognized, this pick-off attempt by the defendant is just one new variation on a corporation trying to evade being held accountable. That corporations are trying every which way to avoid class actions illustrates what a powerful—and essential—device they are for concentrating the power of consumers and for delivering a strong message to corporations to deter them from lying to their customers."

For Chicago attorney Todd McLawhorn, who represents the plaintiffs, the ruling highlights that these types of procedural maneuvers do little to advance a defendant's case or credibility before a court. "I believe this decision is a clear statement that the Seventh Circuit would prefer to address cases on the merits, as opposed to allowing various permutations of defense gambits to pick off class plaintiffs and thereby attempt to decapitate the class. In that regard, I note that the Seventh Circuit awarded costs to the plaintiffs as part of its ruling reversing the district court," McLawhorn said.

"On appeal, I wanted to emphasize that, as a legal matter, an unaccepted offer has no effect and is a nullity," McLawhorn continued. "I also wanted to point out the oddity that would result if the court ruled in Volvo's favor. Defendants could engage in wrongdoing (here, fraud); dictate what they deemed to be the acceptable damages; offer those damages to the plaintiff; and if the plaintiff refused, then claim the plaintiff had somehow forfeited her right to proceed in litigation. I hope that this decision makes clear for plaintiffs that they need not choose between accepting an inadequate offer and risking dismissal of their cases; plaintiffs cannot be forced to accept settlement offers—period."

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