Consumer Crusade v. Conesco

COLORADO COURT OF APPEALS

Court of Appeals No.: 05CA2241
Arapahoe County District Court No. 04CV3158
Honorable Timothy L. Fasing, Judge

Consumer Crusade, Inc., a Colorado corporation,

Plaintiff-Appellant,

v.

Conesco Storage Systems, Inc., a Colorado corporation, and Charles E. Hodges, its officers and directors,

Defendants-Appellees.

ORDER AFFIRMED

Division II
Opinion by: JUDGE TERRY
Rothenberg and Loeb, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(f)
Announced: March 1, 2007

The Demirali Law Firm, P.C., A.M. Demirali, Denver, Colorado, for Plaintiff-Appellant

Deisch, Marion & Klaus, P.C., Jeffrey B. Klaus, Denver, Colorado, for Defendants-Appellees

Plaintiff, Consumer Crusade, Inc., appeals the district court's order dismissing its complaint against defendants, Conesco Storage Systems, Inc. and Charles E. Hodges. We affirm.

I.

At various times during 2003, defendants sent unsolicited facsimile advertisements to certain Colorado residents. Those residents assigned their claims to plaintiff, who filed a complaint in district court alleging that defendants violated various provisions of the federal Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b) (2005), by sending unsolicited facsimile advertisements to plaintiff's assignors.

The district court granted defendants' motion to dismiss because plaintiff lacked standing to bring the claims as an assignee.

II.

Plaintiff contends that the district court erred when it found that plaintiff does not have standing to bring claims under the TCPA as an assignee. We disagree.

We review a trial court's ruling on a motion to dismiss de novo. McKenna v. Oliver, ___ P.3d ___, ___ (Colo. App. No. 05CA0298,

Sept. 7, 2006); Ceja v. Lemire, 143 P.3d 1093, 1095 (Colo. App. 2006)(cert. granted Oct. 6, 2006).

For the reasons set forth in McKenna v. Oliver, supra, we conclude that the trial court reached the correct result in dismissing the TCPA claims because plaintiff did not have standing to bring those claims as an assignee. See also U.S. Fax Law Ctr., Inc. v. Myron Corp., ___ P.3d ___, ___ (Colo. App. No. 05CA1426, Nov. 2, 2006); U.S. Fax Law Ctr., Inc. v. IHIRE, Inc., ___ F.3d ___ (10th Cir. No. 05-1325, Feb. 7, 2007) (TCPA claims are not assignable under Colorado law).

Order affirmed.

JUDGE ROTHENBERG and JUDGE LOEB concur.