

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2003-013325

12/19/2003

HONORABLE JANET E. BARTON

CLERK OF THE COURT  
D. Caggiano  
Deputy

FILED: 12/24/2003

DRAGON MARKETING L L C, et al.

DAVID M HAMPTON

v.

ARIZONA LOAN CENTER INC, et al.

KARL S PEARSON

MINUTE ENTRY

04:08 p.m. This is the time set for Oral Argument on Defendants' Motion to Dismiss. Plaintiff Dragon Marketing L.L.C. is represented by counsel, David M. Hampton. Defendants Arizona Loan Center Inc. and Jeffrey E. Gross are represented by counsel, Karl Pearson.

Court reporter, Margie Riley, is present.

Argument is presented.

IT IS ORDERED taking this matter under advisement.

4:25 p.m. Matter concludes.

**LATER:**

**Defendants' Motion to Dismiss:**

Plaintiff, by its own admission, maintains its claims herein as an assignee (“[t]here is only one Plaintiff in the case, Dragon Marketing, LLC who is the successor in interest to all of the assignments.”). Plaintiff’s Response to Motion to Dismiss at p.2. Defendants argue that Plaintiff’s claims herein, which are based upon and arise under the Telephone Consumer Protection Act (“TCPA”) sound in tort and, therefore, cannot be brought by an assignee. Consequently, Defendants argue that Plaintiff’s Complaint must be dismissed.

Under Arizona law, a cause of action in tort is not assignable absent a specific statute allowing for a particular cause of action in tort to be assigned. See K.W.Dart Truck Co. v. Noble, 116 Ariz.9, 567 P.2d 325 (1977). Plaintiff argues that A.R.S. 44-1482 allows for the assignment of claims under the TCPA.

A.R.S. 44-1482 addresses the remedies available under Arizona law for a person who receives an unsolicited commercial fax advertisement. A.R.S. 44-1482(C) provides that the statute does not alter or restrict any rights a person who receives such faxes “may have under federal law to recover for the sending of an unsolicited commercial fax advertisement by a vendor.” What A.R.S. 44-1482 does not address is whether a person who receives an unsolicited commercial fax advertisement may assign any claims he/she has under federal law to recover for the sending of such faxes. Consequently, despite Plaintiff’s contention to the contrary, A.R.S. 44-1482 does not allow for the assignment of claims based upon the TCPA.

As there is no specific statute allowing for the assignment of claims based upon the TCPA, whether Plaintiff can maintain this lawsuit depends upon whether such claims sound in tort.

Both Plaintiff and Defendants agree that the TCPA was intended to afford persons relief from the invasion of privacy and nuisance caused by the receipt of unsolicited commercial fax advertising. See Plaintiff’s Response to Motion to Dismiss at p.4. See also Defendants’ Reply in Support of Motion to Dismiss at p. 3. Under Arizona law, invasion of privacy and nuisance claims are tort claims. Therefore, in this Court’s opinion, claims brought under the TCPA sound in tort as they provide remedies for tortious conduct.

As there is no specific statute permitting the assignment of claims under the TCPA and as such claims sound in tort,

**IT IS HEREBY ORDERED** granting Defendants’ Motion to Dismiss.<sup>1</sup>

---

<sup>1</sup> Another argument made by Defendants is that the assignments made to Plaintiff are not valid. The Court, however, need not decide that issue. Quite simply, the validity of the assignments is irrelevant if, as this Court has concluded, an assignee cannot maintain a claim in Arizona based upon the TCPA. Finally, at oral argument Defendants’ withdrew their argument that the actual recipient of an unauthorized fax cannot bring a claim in Arizona under the TCPA and that Arizona’s Attorney General is vested with the only authority to bring lawsuits in Arizona for violations of the TCPA.