

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DJANA PEARSON MORRIS,
Plaintiff

v.

FAX.COM, INC., et al.,
Defendants

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)
) **Case No. 03-CA-1109**
) **Calendar 7**
) **Judge Kravitz**
)
)

ORDER DENYING DEFENDANTS' MOTION TO DISMISS COUNT I OF THE
COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

This matter is before the Court on the defendants' motion to dismiss, the plaintiff's opposition, and the defendants' reply. The defendants assert that the Court is without subject matter jurisdiction to hear Count I of the complaint because neither the laws of the District of Columbia nor the rules of the Superior Court of the District of Columbia affirmatively authorize the filing of a private right of action under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, in the Superior Court. For the reasons set forth herein, the Court concludes that the defendants' motion must be denied.

The Telephone Consumer Protection Act provides that a person may, "if otherwise permitted by the laws or rules of a court of a State, bring in an appropriate court of that State" an action for damages or injunctive relief under the Act. 47 U.S.C. § 227 (b)(3). The defendants assert that the language of § 227(b)(3) requires a state to "opt in" to the TCPA by affirmatively providing for a cause of action thereunder. The defendants rely primarily on a decision by Judge Long dated July 22, 2003 in *Portuguese-American Leadership Council of the United States, Inc. v. Investors' Alert, Inc.*, Civil

Action No. 01-CA-3479. This Court, however, respectfully disagrees with Judge Long's analysis of the issue.


With limited exceptions not applicable here, "the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia." D.C. Code § 11-921 (2001). Given this broad statutory grant of general jurisdiction, it is clear, in the Court's view, that "the laws or rules of court" of the District of Columbia "otherwise permit[]" the plaintiff to bring a claim under the TCPA in Superior Court.

This Court does not write on a blank slate in deciding this motion. Consistent with this Court's conclusion, Judge Duncan-Peters recently held, in *City Lights School, Inc. v. T-Mobile USA, Inc.*, Civil Action No. 03-CA-2780 (Nov. 18, 2003), that the Superior Court has jurisdiction over claims brought under the TCPA. Moreover, the vast majority of courts in other jurisdictions that have considered this same issue have concluded, as does this Court, that state legislatures need not affirmatively "opt in" to the TCPA in order for state courts of general jurisdiction to have jurisdiction over TCPA claims. Instead, the great majority of these courts have held, a state court of general jurisdiction may hear TCPA claims unless the state legislature has affirmatively "opted out" of the TCPA. *See, e.g., Kaufman v. ACS Systems, Inc.*, 110 Cal. App. 4th 886 (Cal. App. 2d. Dist. 2003); *Condon v. Office Depot*, 2003 Fla. App. LEXIS 12533 (Fla. Dist. Ct. App. Aug. 22, 2003); *Aronson v. Fax.com, Inc.*, 51 Pa. D. & C.4th 421 (2001); *Zelma v. Market U.S.A.*, 778 A.2d 591 (N.J. Super. Ct. 2001); *Schulman v. Chase Manhattan Bank*, 268 A.D. 2d 174, 710 (N.Y. App. Div. 2000); *Reynolds v. Diamond Foods & Poultry, Inc.*, 79 S.W.3d 907 (Mo. 2002); *Hooters of Augusta, Inc. v. Nicholson*, 537

S.E.2d 468 (Ga. App. 2000); *Lary v. Flasch Business Consulting*, Case No. 2020803 (Ala. App. 2003). Cf. *Autoflex Leasing, Inc. v. Mfrs. Auto Leasing, Inc.*, 16 S.W.3d 815 (Tex. App. 2000) (pet. denied) (requiring an “enabling act” by the state legislature before a private action is available under the TCPA). See generally *Int’l Science and Technical Institute, Inc. v. Inacom Communications, Inc.*, 106 F.3d 1146 (4th Cir. 1997).

For the reasons stated herein, as well as those cited by Judge Duncan-Peters in *City Lights School* and the state court cases referred to above, it is this 19 day of December 2003

ORDERED that the defendants’ motion is **DENIED**.


Neal E. Kravitz, Associate Judge
(Signed in Chambers)

Copies mailed to:

Michael C. Worsham, Esq.
1916 Cosner Road
Forest Hill, MD 21050

Edwin H. Staples II, Esq.
125 West Street
PO Box 2289
Annapolis, MD 21401

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