

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
District Judge Gordon P. Gallagher

Civil Action No. 1:23-cv-00318-GPG-NRN

RONDA KLASSEN, *individually and on
behalf of all others similarly situated,*

Plaintiff,

v.

SOLIDQUOTE LLC and DIGITAL MEDIA
SOLUTIONS, LLC f/k/a UNDERGROUND
ELEPHANT,

Defendants.

ORDER

Before the Court is Defendant SolidQuote LLC's Motion for Summary Judgment (D. 109).

The Court GRANTS the motion for the following reasons.

I. UNDISPUTED FACTS

This civil action arises from an automobile insurance telemarketing phone call Plaintiff received that she alleges violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (TCPA).¹ Defendant SolidQuote LLC (SolidQuote) is a digital marketing company that matches consumers with insurance products and services, including as relevant here through the purchase of in-progress, consumer-initiated calls transferred to it by third-parties (D. 115 at 6). In 2019,

¹ The Court draws the operative facts as set forth in the unredacted version of Defendant SolidQuote LLC's Motion for Summary Judgment (D. 115); the unredacted version of Plaintiff's Amended Memorandum of Law in Opposition to Defendant SolidQuote, LLC's Motion for Summary Judgment (D. 137); and the unredacted version of Defendant SolidQuote LLC's Reply in Support of Motion for Summary Judgment (D. 145).

SolidQuote’s parent company, Datalot, entered into a Bilateral Lead, Call and Click Purchase Agreement (the Agreement) with DMS² (D. 115 at 8 ¶ 1; D. 137 at 7 ¶ 1). Incorporated into the Agreement were two Insertion Orders providing for the sale of in-progress calls from consumers that placed inbound calls regarding their interest in automobile insurance services (D. 115 at 8 ¶ 2; D. 137 at 7 ¶ 2). Under the terms of the Agreement, DMS was only authorized to transfer customer-initiated, inbound calls to SolidQuote (D. 115 at 8 ¶¶ 4, 6; D. 137 at 7 ¶¶ 4, 6). The Agreement also required compliance with applicable laws, including the TCPA (D. 115 at 9 ¶ 7; D. 137 at 8 ¶ 7). DMS separately contracted with Insuracall, a company brokering telephone calls between sources and parties purchasing calls for the purpose of selling consumer goods or services (D. 115 at 9 ¶ 8; D. 137 at 8 ¶ 8). In turn, Insuracall contracted with HnM to provide calls that Insuracall could transfer to DMS for sale to DMS’s customers (D. 115 at 9 ¶ 10; D. 137 at 8 ¶ 10). Call transfers from HnM to Insuracall were supposedly “blind,” meaning that Insuracall did not have visibility into the calling practices of HnM, including if they were initiating calls (D. 115 at 9 ¶ 11; D. 137 at 8 ¶ 11). In sum, HnM blind transferred calls to Insuracall, who transferred to DMS, who transferred to SolidQuote.

On April 9 and April 10, 2020, Plaintiff Ronda Klassen received phone calls from numbers beginning with the first six digits of her own phone number: 352-988 (D. 137 at 10–11 ¶ 4, 6; D. 145 at 6 ¶ 4). She did not answer these calls (D. 135 at 28). On April 13, 2020, Plaintiff received another phone call from a number beginning with 352-988, which she answered (D. 115 at 10 ¶ 20; D. 137 at 9 ¶ 20). This call was from a human agent at HnM who spoke with Plaintiff for approximately five minutes about her automobile insurance needs before transferring her to

² At the time, DMS was still operating as its predecessor, Underground Elephant (D. 115 at 3 ¶ 1).

Insuracall (*id.*). Insuracall then transferred her to SolidQuote via the DMS portal (*id.*). Plaintiff was presented with an interactive voice response (IVR) from SolidQuote before reaching a human agent (D. 115 at 10 ¶ 21; D. 137 at 9 ¶ 21). Plaintiff informed the agent from SolidQuote that she had received, rather than dialed, the call, and the agent attempted to sell her insurance anyway (D. 112-5).

Plaintiff's instant suit alleges that SolidQuote violated two provisions of the TCPA: making two or more solicitation calls to residential subscribers whose numbers were on the Do Not Call Registry in violation of 47 U.S.C. § 227(c)(5) and initiating a phone call using a prerecorded voice in violation of 47 U.S.C. § 227(b)(1) (D. 65). Defendant moves for summary judgment on both claims, arguing that it did not call Plaintiff, it is not vicariously liable for HnM's call to Plaintiff, and it is protected by the TCPA's safe harbor provision (D. 115).

II. LEGAL STANDARD

Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The Court must consider the factual record and reasonable inferences based on said record “in the light most favorable to the non-moving party.” *Utah Lighthouse Ministry v. Found. for Apologetic Info. & Research*, 527 F.3d 1045, 1050 (10th Cir. 2008). The moving party bears the burden of demonstrating that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). A genuine issue of material fact exists if a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Id.* If the moving party meets this

burden, the opposing party must go beyond the pleadings and designate evidence showing there is a genuine triable issue. *Celotex*, 477 U.S. at 323–24. Ultimately, the Court’s inquiry on summary judgment is whether the facts and evidence identified by the parties present “a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251–52. “[Q]uestions of intent, which involve intangible factors including witness creditability, are matters for consideration of the fact finder after a full trial.” *Prochaska v. Marcoux*, 632 F.2d 848, 851 (10th Cir. 1980).

III. ANALYSIS

A. Do Not Call Claim

Pursuant to 47 U.S.C. § 227(c)(5), it is unlawful for an entity to call an individual whose telephone number appears on the national Do Not Call Registry more than one time within any 12-month period. SolidQuote claims that it did not violate this provision of the TCPA because it never called Plaintiff and is not responsible for HnM’s April 13, 2020, call to Plaintiff (D. 115 at 14). SolidQuote further argues that even if it is responsible for HnM’s call, that is only one call in a 12-month period. Plaintiff concedes that SolidQuote did not directly dial her number or initiate the April 13 phone call, but she argues that SolidQuote is vicariously liable for HnM’s April 13 call and the two other calls she received on April 9 and 10 (D. 115 at 9 ¶ 15; D. 137 at 8 ¶ 15; D. 137 at 14, 28).

SolidQuote is entitled to summary judgment on Plaintiff’s Do Not Call Claim because it is only liable for one call made to Plaintiff within a 12-month period. The FCC has repeatedly acknowledged that vicarious liability may be imposed under TCPA according to “federal common law principles of agency.” *In re Rules and Regulations Implementing the TCPA of 1991*, 10 FCC

Rcd. 12391, 12397 (1995); *In re Joint Petition Filed by Dish Network, LLC*, 28 FCC Rcd. 6574, 6574 (2013). An agency relationship arises from one of the following forms of authority bestowed upon an agent by its principal: actual authority or apparent authority. *Alfaro-Huitron v. Cervantes Agribusiness*, 982 F.3d 1242, 1251 (10th Cir. 2020). Actual authority exists when “the agent reasonably believes, in accordance with the principal’s manifestations to the agent, that the principal wishes the agent so to act.” *Id.* (quoting Restatement (Third) of Agency § 2.01). Apparent authority, in contrast, exists when a “third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal’s manifestations.” Restatement (Third) of Agency § 2.03. “Liability based upon apparent authority requires reliance by the third party dealing with the agent upon manifestations by the principal.” *Master Commodities, Inc. v. Texas Cattle Mgmt. Co.*, 586 F.2d 1352, 1358 (10th Cir. 1978).

SolidQuote did not have the requisite authority over HnM to be liable for the April 9 and 10 calls that Plaintiff infers were made by HnM on behalf of SolidQuote. There is no evidence that SolidQuote and HnM ever had any direct relationship or communication, and there is no evidence to support a claim that SolidQuote prescribed permissible acts for HnM to take. The parties do not dispute that SolidQuote did not even have direct dealings with Insuracall, DMS’s subcontractor that contracted with HnM (D. 115 at 9 ¶ 12; D. 137 at 8 ¶ 12). Because SolidQuote and HnM did not interact, HnM did not have any words or actions by SolidQuote on which to form a belief about what actions SolidQuote wanted it to take. Therefore, SolidQuote did not have actual authority over HnM.

SolidQuote also did not have apparent authority over HnM for the April 9 and 10 calls. First, these calls went unanswered, so it is unclear if they were indeed from HnM.³ Plaintiff admits that she only “infers” these calls came from HnM (D. 137 at 28; D. 137 at 9 ¶ 26). Second, there is no evidence that Plaintiff had any interaction with SolidQuote before April 13, 2020, meaning that SolidQuote could not have made any representation to Plaintiff that HnM was its agent at the time of the April 9 and 10 phone calls.

However, SolidQuote did assert apparent authority over HnM and is vicariously liable for the April 13, 2020 call. From Plaintiff’s point of view, someone called her asking about her auto insurance needs, and she was transferred to SolidQuote (D. 137 at 10–11 ¶ 5; D. 145 at 6 ¶ 5). She informed SolidQuote’s representative that she had received a call, and SolidQuote’s representative proceeded to try to sell her insurance (D. 112-5). A reasonable person would understand this interaction as indicating that HnM was acting on behalf of SolidQuote when it called Plaintiff, and SolidQuote approved of HnM’s call. Therefore, SolidQuote exercised apparent authority over HnM by ratifying HnM’s action on its behalf.

Because SolidQuote is only vicariously responsible for one phone call made to Plaintiff during a 12-month period and 47 U.S.C. § 227(c)(5) requires that an entity call an individual whose telephone number appears on the national Do Not Call Registry more than one time within any 12-month period, SolidQuote did not violate the TCPA, and its motion for summary judgment on this claim is granted.

B. Prerecorded Voice Message Claim

³ Although this fact is immaterial because even if the calls were from HnM, there is no further evidence that SolidQuote made any representation to Plaintiff that HnM was its agent.

SolidQuote is entitled to summary judgment on Plaintiff’s prerecorded voice message claim because HnM did not initiate the April 13, 2020, phone call to Plaintiff with a prerecorded voice message. 47 U.S.C. § 227(b)(1) prohibits the initiation of “any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party.” It is undisputed that SolidQuote did not directly call Plaintiff, and the April 13 call that Plaintiff received from HnM was initiated by a human agent (D. 115 at 9 ¶ 15; D. 115 at 10 ¶ 20; D. 137 at 9 ¶ 20; D. 137 at 8 ¶ 15). SolidQuote’s prerecorded message did not play until Plaintiff was transferred to SolidQuote, after speaking with HnM’s agent for approximately five minutes (D. 115 at 10 ¶ 20–21; D. 137 at 9 ¶ 20–21). Therefore, even holding SolidQuote vicariously liable for HnM’s call to Plaintiff, the call was not initiated “using an artificial or prerecorded voice,” and SolidQuote’s motion for summary judgment is granted.

IV. CONCLUSION

Accordingly, Defendant’s Motion for Summary Judgment (D. 109) is GRANTED. Plaintiff’s Motion for Class Certification (D. 112) is therefore DENIED AS MOOT. It is FURTHER ORDERED that the clerk of the court is instructed to close this case.

DATED November 19, 2025.

BY THE COURT:



Gordon P. Gallagher
United States District Judge