

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CRAIG CUNNINGHAM,

Plaintiff,

v.

YAKIN JORDAN, MJ MINISTRIES
SPREADING THE GOSPEL, INC., MJ
MINISTRIES, LLC, STEVEN SLEDGE,
AARON JORDAN, NAOMI COOK,
LUTHER MCKINSTY, FRANK
JULIANO, JONATHAN FOREMAN,
JESSE SPENCER, WARREN TAYLOR,
SERVING HANDS COMMUNITY
DEVELOPMENT CORPORATION, and
JOHN/JANE DOES 1-5,

Defendants.

CIVIL ACTION NO.

1:22-cv-1419-WMR

ORDER

This matter is before the Court on Defendants Frank Juliano, Jonathan Foreman, Jesse Spencer, and Serving Hands Community Development Corporation's (collectively, the "Serving Hands Defendants") Motion for Summary Judgment. [Doc. 42]. Defendants Steven Sledge, Aaron Jordan, Naomi Cook, Luther McKinstry, Wayne Taylor, and MJ Ministries Spreading the Gospel, Inc. (collectively, the "MJ Ministries Defendants") join this motion. [Doc. 43]. Plaintiff Craig Cunningham, proceeding *pro se*, did not respond to the motion. After

reviewing the motion, the relevant parts of the record, and the governing law, Defendants' motions [Docs. 42, 43] are **GRANTED**.

I. Background

This case arises out of telemarketing calls Plaintiff received on his cellphone. [Doc. 1 at 7]. Plaintiff alleges the Defendants called his cellphone multiple times soliciting donations. [*Id.*] He further alleges that these calls were placed using spoofed caller IDs, a prerecorded message, and an automated dialing system. Plaintiff claims that he made a donation in response to one of these calls and observed that an entity "MJ Spreading" charged his credit card. [*Id.*] From this, Plaintiff alleges that the MJ Ministries Defendants placed a portion of the calls he received. [*Id.* at 10]. Plaintiff also asserts that both the MJ Ministries Defendants and Serving Hands Defendants use their business entities to launder the money they receive from their automated calls. [*Id.* at 10-11]. In response, Plaintiff filed this action alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA") and the Texas Business & Commerce Code §§ 302.101 and 305.0533 ("TBCC"). [*Id.* at 13-19].

Defendants have now moved for summary judgment. [Docs. 42, 43]. The Serving Hands Defendants argue that Plaintiff has failed to produce any evidence to support his claims that the Defendants placed the calls at issue. [Doc. 42-1 at 1]. The MJ Ministries Defendants join this motion and assert the same. [Doc. 43 at 1]. All

Defendants point to an additional lawsuit Plaintiff filed in federal court in Texas. [Doc. 42-2; Doc. 43-1]. Defendants assert that, in this suit in Texas, Plaintiff alleges that he was called by the same phone numbers at issue in the case before this Court, and Plaintiff concedes in the Texas suit that he does not know who placed these calls. [Doc. 42-1 at 6]. Defendants further assert that discovery is now closed, and Plaintiff failed to conduct any discovery over the eleven-month discovery period. [*Id.* at 3-4]. Because of this, Defendants argue that Plaintiff has failed to prove his case such that they are entitled to summary judgment. [*Id.* at 6].

II. Legal Standard

Pursuant to Federal Rule of Civil Procedure 56(a), summary judgment is proper when the record evidence shows that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A dispute is “genuine” if evidence suggests a reasonable jury could return a verdict for the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “An issue of fact is ‘material’ if, under the applicable substantive law, it might affect the outcome of the case.” *Hickson Corp. v. N. Crossarm Co., Inc.*, 357 F.3d 1256, 1259 (11th Cir. 2004).

The moving party bears the burden of demonstrating that there is no genuine issue of material fact that should be decided at trial. *Clark v. Coats & Clark, Inc.*,

929 F.2d 604, 608 (11th Cir. 1991). If the moving party carries the initial burden, then the burden shifts to the non-moving party to demonstrate that there is an issue of material fact that precludes summary judgment. *Id.* Here, Plaintiff did not respond to Defendant’s motion. However, “the district court cannot base the entry of summary judgment on the mere fact that the motion was unopposed, but, rather, must consider the merits of the motion.” *United States v. One Piece of Real Prop. Located at 5800 SW 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1101 (11th Cir. 2004). Likewise, the Court still must view the facts in the light most favorable to the non-moving party. *Id.*

III. Discussion


The TCPA “makes it illegal to ‘make any call . . . using any automatic telephone dialing system or an artificial or prerecorded voice’ to . . . ‘any . . . cellular telephone service’ . . . without the ‘prior express consent of the called party.’” *Glasser v. Hilton Grand Vacations Co., LLC*, 948 F.3d 1301, 1305 (11th Cir. 2020) (quoting 47 U.S.C. § 227(b)(1)(A)). Likewise, the TBCC allows individuals who receive a call in violation of the TCPA to bring an action in Texas. Tex. Bus. & Com. Code § 305.053. However, the plaintiff asserting a violation of either of these laws has the burden of demonstrating that the defendant at issue made the prohibited calls. (47 U.S.C. § 227(b)(1)(A)(iii)). Here, Plaintiff has failed to meet that burden.

Plaintiff has failed to allege that the Defendants before the Court are the persons or entities that placed the calls at issue. Plaintiff alleges that the Defendants before the Court placed the calls at issue. [Doc. 1 at 7]. However, Plaintiff does not include any records or other evidence to substantiate these claims. Furthermore, the Defendants assert that Plaintiff has not sent them a single discovery request throughout the eleventh-month discovery period in this case. [Doc. 42-1 at 4]. Plaintiff has since filed a second lawsuit in the United States District Court for the Eastern District of Texas bringing nearly identical claims. [Doc. 42-2]. In that suit, Plaintiff concedes that he does not know the identities of the callers. [*Id.* at 1:3]. Defendants assert that Plaintiff has filed this second suit based on calls from the same phone numbers as the calls that gave rise to the suit before this Court. [Doc. 42-1 at 5–6]. Plaintiff has not responded to this assertion nor continued to litigate this case through the discovery period. Because of this, the Court finds that Plaintiff has failed to establish that the Defendants are the persons or entities that placed the calls that gave rise to Plaintiff's claims. As such, Plaintiff has failed to prove a central element of his case, and the Defendants motions for summary judgment [Docs. 42, 43] are **GRANTED**.

IV. Conclusion

Having reviewed the record, Plaintiff has failed to allege that the Defendants before the Court made the calls at issue in this case. Accordingly, Defendants motions for summary judgment [Docs. 42, 43] are **GRANTED**.

SO ORDERED, this 8th day of August, 2023.



WILLIAM M. RAY, II
UNITED STATES DISTRICT JUDGE