*Campbell-Ewald Company v. Gomez*, No. 14-857

Article III of the Constitution limits the jurisdiction of federal courts to "cases" and "controversies." As the Supreme Court recently explained in *Genesis HealthCare Corp. v. Symczyk*, 133 S. Ct. 1523 (2013), a lawsuit does not present an Article III case or controversy and "must be dismissed as moot" when "an intervening circumstance deprives the plaintiff of a 'personal stake in the outcome of the lawsuit,' at any point during the litigation." Today, in *Campbell-Ewald Co. v. Gomez*, No. 14-857, the Supreme Court held that a defendant's unaccepted offer to satisfy the claims of a named plaintiff in a putative class-action lawsuit is not sufficient to render the suit moot.

The decision—closely watched by plaintiffs who bring class action lawsuits and defendants who face them—holds that simply making an offer of full relief to a named plaintiff in accordance with the process outlined in Federal Rule of Civil Procedure 68 is not enough to moot the plaintiff's individual claim. At the same time, the Supreme Court did not address whether a defendant that actually tenders a payment for full individual relief can moot a named plaintiff's claim.

Today's decision originated in a putative class action filed by respondent Jose Gomez against petitioner Campbell-Ewald Co. for alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227. Gomez's complaint alleged that Campbell-Ewald violated the TCPA when it sent him am unsolicited text message as part of a recruiting campaign for the U.S. Navy. Gomez's complaint sought relief in the form of treble statutory damages, costs, attorney's fees, and an injunction.

Before Gomez moved to certify the class, Campbell-Ewald made a settlement proposal and also filed an offer of judgment under Federal Rule of Civil Procedure 68, which permits a defendant to make a pre-trial offer to allow judgment. Campbell-Ewald offered to pay Gomez $1,503 for each unsolicited text message he received—which would more than satisfy his claim for treble statutory damages—as well as costs. Campbell-Ewald also proposed an injunction that would bar it from sending the allegedly offending text messages. Campbell-Ewald's offer was made without an admission of liability; to the contrary, like most defendants, the company disclaimed liability. Gomez did not accept Campbell-Ewald's offer, instead allowing it to expire.

Campbell-Ewald then moved to dismiss Gomez's complaint for lack of subject-matter jurisdiction, arguing that its offer of judgment mooted Gomez's individual claim by providing him complete relief. Campbell-Ewald also argued that the putative class claims were moot because Gomez had not yet moved for class certification by the time his claim became moot.

The district court denied this motion, but later granted summary judgment for Campbell-Ewald on the ground that Campbell-Ewald, as a naval contractor, enjoyed sovereign immunity. Gomez appealed, and the Ninth Circuit held that both Gomez's claim and the putative class claims remained live. The court of appeals also vacated the district court's sovereign immunity ruling.

The Supreme Court affirmed in an opinion authored by Justice Ginsburg and joined by Justices Kennedy, Breyer, Sotomayor, and Kagan. The Court addressed mootness first. According to the Court, "basic principles of contract law" established that "Campbell-Ewald's settlement bid and Rule 68 offer of judgment, once rejected, had no continuing efficacy." In the face of Gomez's rejection of the offer and Campbell-Ewald's continued denial of liability, Gomez had no entitlement to the relief Campbell-Ewald had offered. According to the Court, "We hold today, in accord with Rule 68 of the Federal Rules of Civil Procedure, that an unaccepted settlement offer has no force. Like other unaccepted contract offers, it creates no lasting right or obligation." With no such entitlement, in turn, the parties were still adverse, and so their dispute remained a live one that a federal court could decide. The majority expressly adopted the mootness analysis that Justice Kagan had outlined in her dissenting opinion in *Genesis Healthcare*. 133 S. Ct. 1523, 1532 (2013) (Kagan, J., dissenting).

Crucially, the Court reserved judgment on the question whether "the result would be different if a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount." As we have previously detailed, the question of whether tendering a payment (as opposed to simply making an offer) would moot a claim had featured heavily at oral argument, but the Court determined that the "question is appropriately reserved for a case in which it is not hypothetical."

On the issue of sovereign immunity, the Court held that federal contractors do not "share the Government's unqualified immunity from liability and litigation." As the Court explained, "[w]hen a contractor violates both federal law the Government's explicit instructions"—which, the record demonstrated, authorized Campbell-Ewald to send recruiting text messages only to consenting recipients—"no 'derivative immunity' shields the contractor from suit by persons adversely effected by the violation."

Justice Thomas concurred in the judgment of the Court, but asserted that the Court should have based its reasoning on the "common-law history of tenders," which required that defendants actually produce a payment for full relief. As with the dissenters in this case, Justice Thomas did not address the majority's sovereign immunity holding.

Chief Justice Roberts filed a dissent, joined by Justices Scalia and Alito, explaining that "[i]f the defendant is willing to give the plaintiff everything he asks for, there is no case or controversy to adjudicate, and the lawsuit is moot." As the Chief Justice put it, "the federal courts exist to resolve real disputes, not to rule on a plaintiff's entitlement to relief already there for the taking."

And although vigorously disputing the majority's holding, the Chief Justice went on to note that "this case is limited to its facts," and that while the majority holds that "an *offer* of complete relief is insufficient to moot a case," it "does not say that *payment* of complete relief leads to the same result."

Justice Alito also filed a separate dissent to "emphasize what" he saw "as the linchpin" for the dissenters' mootness finding: that "[t]here is no real dispute that Campbell-Ewald would 'make good on [its] promise' to pay Gomez the money it offered him if the case were dismissed." And Justice Alito also stated that a defendant could "make 'absolutely clear' that it will pay the relief it has offered" by, among other things, "deposit[ing] the money with the district court (or another trusted intermediary) on the condition that the money be released to the plaintiff when the court dismisses the case as moot."

*Campbell-Ewald* should be of significant interest to any class-action defendant. Today's opinion makes simple offers of settlement insufficient to moot a case. But it leaves open the possibility that settlement offers combined with additional commitments to pay claims—if accepted by plaintiffs—might suffice to end both individual and class claims.

Any questions about the case should be directed to Archis A. Parasharami (+1 202 263 3328) or Brian D. Netter (+1 202 263 3339) in our Washington DC office.