

The Supreme Court Decides *Campbell-Ewald Co. v. Gomez*: Mere Offer of Relief Does Not Moot Claims

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Yesterday the Supreme Court issued its decision in the closely-watched case of *Campbell-Ewald Co. v. Gomez*, 577 U.S. ___ (2016). The Court addressed a recurring issue in class action litigation: can a defendant avoid needless litigation expense by offering the named plaintiff everything he or she is seeking in the lawsuit, thereby mooting the plaintiff's claim? A majority of the Court rejected that strategy, holding that an unaccepted offer to fully satisfy the named plaintiff's individual claim neither moots the individual claim nor the class claim. Although the Court's decision will stymie defendants' efforts to avoid needless litigation expense by *offering* the named plaintiff full relief, the opinion leaves open a potential avenue for doing so—actually *providing* the plaintiff with full relief.

Background and Procedural History

Campbell-Ewald involves alleged violations of the Telephone Consumer Protection Act. Plaintiff Gomez alleges that defendant Campbell-Ewald Co. ("**Campbell**"), a marketing firm, sent him an unauthorized text message recruiting him for the U.S. Navy, and Gomez seeks to represent a nationwide class of similarly situated individuals. Following initiation of the suit, Campbell offered Gomez complete relief, including the maximum amount of potential statutory damages, reasonable costs, and an injunction.

When Gomez did not accept the offer, Campbell moved to dismiss the action for lack of jurisdiction, arguing that its offer of complete relief mooted the claims. The district court denied the motion, holding that the offer of complete relief neither mooted the plaintiff's individual claim nor the class claim. The Ninth Circuit affirmed. The Supreme Court granted certiorari to resolve the circuit split on this mootness-by-unaccepted-offer issue.

The Majority's Opinion

The majority, in an opinion authored by Justice Ginsburg and joined by Justices Kennedy, Breyer, Sotomayor and Kagan, held that federal courts maintain jurisdiction under Article III of the Constitution, even after a defendant offers complete relief that the plaintiff rejects, because there is still a "case or controversy" for the court to resolve. "Under basic principles of contract law," the court reasoned, an unaccepted settlement offer has "no continuing efficacy" and "creates no lasting right or obligation." After rejecting Campbell's offer, "Gomez remained emptyhanded" with his claim "wholly unsatisfied." His claim was not moot, the court reasoned, because he maintained a stake in the litigation and the court could still grant relief.

Notably, even the majority opinion left open the possibility that a defendant could moot a plaintiff's claim by actually providing (rather than merely offering) complete relief. The majority distinguished Campbell's case law as not showing "that an *unaccepted* settlement offer can" moot a claim because in those cases the plaintiffs had actually received full redress for their injuries. Campbell's offer, the court reasoned, was different because it did not actually provide the relief sought. The

Court expressly declined to decide, however, “whether the result would be different if a defendant deposits the full amount of the plaintiff’s individual claim” either with the plaintiff or with the court. Instead, the Court held that an unaccepted *offer* did not moot the plaintiff’s or class’ claims.

Justice Thomas concurred in the judgment—that Gomez’s claim was not moot—but premised his view on the common law of tenders rather than principles of contract law.

The Dissents

Chief Justice Roberts, joined by Justices Scalia and Alito (who also wrote separately), dissented. In their view, an unaccepted offer to fully satisfy a plaintiff should moot the case because “when a plaintiff files suit seeking redress for an alleged injury, and the defendant *agrees* to fully redress that injury, there is no longer a case or controversy”

The dissent also provided defendants with a roadmap for the future: “The good news is that this case is limited to its facts. The majority holds that an *offer* of complete relief is insufficient to moot a case. The majority does not say that *payment* of complete relief leads to the same result. For aught that appears, the majority’s analysis may have come out differently if Campbell had deposited the offered funds with the District Court. This Court leaves that question for another day—assuming there are other plaintiffs out there who, like Gomez, won’t take ‘yes’ for an answer.”

Takeaways from Campbell-Ewald

Campbell-Ewald eliminates a defendant’s chances of preventing class action litigation by only *offering* the named plaintiff full relief. The Court’s holding—that an unaccepted offer of complete relief does not moot a plaintiff’s claim—resolves a circuit split and removes that precise strategy from a class action defendant’s toolbox. It is worth noting, however, that serving a Rule 68 offer of judgment, even if insufficient to moot a plaintiff’s claim, can provide a basis for a defendant to recover its own post-offer costs and avoid liability for the plaintiff’s post-offer costs.

But *Campbell-Ewald* expressly leaves open the possibility that a defendant can moot a plaintiff’s claim by actually *providing* the plaintiff with relief, rather than merely offering to do so. The opinions note two potential methods: (1) giving the plaintiff the money, for example, by check or deposit; or (2) depositing the money with the court. In fact, at least two district courts have previously identified this distinction in holding that claims were mooted when a defendant did more than just offer the plaintiff relief. See *Murphy v. Global Response Corp.*, No. 14-62673-CIV, 2015 U.S. Dist. LEXIS 73146, at *13-14 (S.D. Fla. June 5, 2015) (“critical difference exists” and claims moot where defendant “has unconditionally tendered payments to Plaintiffs that fully cover (and more) their claims”); *Franco v. Allied Interstate LLC*, No. 13-cv-4053, 2015 U.S. Dist. LEXIS 160688 (S.D.N.Y. Nov. 30, 2015) (granting defendant’s motion for entry of judgment in favor of plaintiff and finding the judgment moots plaintiff’s claim).

Going forward, class action defendants who were previously willing to offer full relief will likely provide such relief in an effort to take advantage of the distinction identified in *Campbell-Ewald*. It remains to be seen whether that will be deemed a sufficient basis for mooting a plaintiff’s individual claim and the class claims.

For additional information, please contact one of the Haynes Boone lawyers listed below.