

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CITY SELECT AUTO SALES, INC.,
a New Jersey corporation,
individually and as the
representative of a class of
similarly situated persons,

Plaintiff,

v.

DAVID RANDALL ASSOCIATES,
INC., et al.,

Defendants.

Civil Action
No. 11-2658 (JBS/KMW)

OPINION

APPEARANCES:

Alan C. Milstein, Esq.
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-and-

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SIMANDLE, Chief Judge:

I. INTRODUCTION

This matter comes before the Court upon Plaintiff City Select Auto Sales, Inc.'s (hereinafter, "City Select" or the "Plaintiff") motion for entry of judgment as final under Fed. R. Civ. P. 54(b) [Docket Number 242], and Plaintiff's motion for a new trial pursuant to Fed. R. Civ. P. 59(a) [Docket Number 247].

II. FACTUAL AND PROCEDURAL BACKGROUND

The Court has summarized the detailed factual and procedural background of this case in its previous Opinions regarding this litigation, see City Select Auto Sales, Inc. v. David Randall Associates, Inc., No. 11-2658, 2014 WL 4755487 (D.N.J. Sept. 24, 2014); City Select Auto Sales, Inc. v. David/Randall Assocs., Inc., 96 F. Supp. 3d 403 (D.N.J. 2015); and City Select Auto Sales, Inc. v. David/ Randall Associates, Inc., 151 F. Supp. 3d 508 (D.N.J. 2015), so a recount of only those facts relevant to the resolution of the instant motions will be provided.

A. Pretrial Opinions In This Litigation

In its September 24, 2014 Opinion, the Court denied Defendants' motion for summary judgment with respect to Raymond Miley, III's (hereinafter "Mr. Miley") individual liability, holding that the record was "replete with factual disputes concerning Miley's personal involvement in the junk faxes that form the predicate of this litigation," as it specifically noted

the conflicting deposition testimony of Mr. Miley and Ms. April Clemmer, his office manager. City Select, 2014 WL 4755487 at *9. In its March 27, 2015 Opinion, the Court granted in part Plaintiff's motion for classwide summary judgment, and entered Judgment in favor of Plaintiff and against Defendant David/Randall Associates, Inc. (hereinafter, "David/Randall"), in the amount of \$22,405,000 for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (hereinafter, the "TCPA"). City Select, 96 F. Supp. 3d at 403. The Court denied Plaintiff's motion for classwide summary judgment as to Mr. Miley's individual liability. In the ensuing Order and Judgment, the Court ordered that Judgment "shall be entered in favor of the Plaintiff Class and against David/Randall Associates, Inc. in the amount of \$22,405,000. [Docket Item 152.] The Court did not make the Judgment final and appealable under Fed. R. Civ. P. 54(b); instead, the Court entered a stay of providing notice to the Class and for motions related to attorneys' fees until further order of the Court, and ordered trial to commence to determine whether Mr. Miley was individually liable for the faxes at issue.

Then, in its October 26, 2015 Opinion, the Court denied Plaintiff's motion to certify the March 27, 2015 Judgment as final. City Select, 151 F. Supp. 3d at 510. The Court also

stayed class notice and briefing on any application for attorneys' fees until further Order of the Court, and referred the matter to Magistrate Judge Karen Williams for a final pretrial/settlement conference relative to the individual liability claim against Mr. Miley.

B. May 2016 Miley Jury Trial

A jury trial on Mr. Miley's individual liability commenced on May 23, 2016, and on May 26, 2016, the jury returned a verdict in favor of Miley, finding that (1) he did not have direct, personal participation in any of the four unsolicited fax campaigns, and (2) he did not personally authorize any of the four unsolicited fax campaigns. [Docket Item 240.] The Court then entered judgment on the verdict. [Docket Item 241.]

C. Post-Trial Matters

After trial, the Court asked counsel whether there were any matters precluding entry of final judgment against David/Randall in the amount of \$22,405,000, and Plaintiff subsequently filed a motion for entry of judgment as final under Fed. R. Civ. P. 54(b). [Docket Item 242]. Additionally, on June 24, 2016, given its disagreement on two of the Court's jury instructions described infra, Plaintiff filed a motion for a new trial on Miley's individual liability pursuant to Fed. R. Civ. P. 59(b). [Docket Item 247].

III. MOTION FOR CERTIFICATION OF JUDGMENT AGAINST DAVID/RANDALL AS FINAL

First, Plaintiff seeks certification of the Judgment against David/Randall as final under Fed. R. Civ. P. 54(b) in the amount of \$22,405,000, which is based on 44,810 successful unsolicited transmissions multiplied by the amount of statutory damages, or \$500 each. (Pl.'s Br. at 5.)

A. STANDARD OF REVIEW

Federal Rule of Civil Procedure 54(b) provides that when an action involves more than a single claim for relief, as here, "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if" the Court finds "no just reason for delay." Fed. R. Civ. P. 54(b); see also City Select, 151 F. Supp. 3d at 510-512 (summarizing caselaw regarding 54(b)). Importantly, a district court must ensure that an immediate appeal actually advances the purposes of Rule 54(b), by evaluating (1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in a setoff against the judgment



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