

# New York Law Journal



Web address: <http://www.nylj.com>

©2008 ALM Properties, Inc. An *incisivemedia* publication

VOLUME 240—NO. 15

TUESDAY, JULY 22, 2008

## OUTSIDE COUNSEL

BY SANDER BAK AND MIA KOROT

### *'Sprint v. APCC': Scope of Federal Standing Expands*

In a 5-4 decision issued on June 23, 2008, *Sprint Communications Co. LP v. APCC Services Inc.*,<sup>1</sup> the U.S. Supreme Court held that assignees of legal claims for money owed have standing to pursue those claims in federal court, even when the assignees were to remit the proceeds of the litigation to the assignors.

The import of the decision is that it permits parties that have suffered no actual injury and who have no financial stake in the outcome of the litigation to contract into lawsuits and bring suit in federal court.

#### Background

In 2003, assignees of pay-phone service providers (PSPs) brought suit under the Telecommunications Act of 1996, which requires interexchange carriers (e.g., long distance carriers) to pay "dial-around" compensation to PSPs for certain long distance calls originating from their pay phones. To avoid the expense of litigation, PSPs often assign their dial-around claims to billing and collection firms, called "aggregators," to bring suit on their behalf. In this case, the assignment agreements provided that each PSP "assigns, transfers and sets over to [plaintiff] for purposes of collection all rights, title and interest of the [PSP] in the [PSP's] claims, demands or causes of action for 'Dial-Around compensation.'"<sup>2</sup>

Additionally, each PSP and assignee separately agreed that the assignee would remit all proceeds from the litigation to the PSP and that the PSP would pay the assignee for its services.

Once the lawsuits were filed, defendant long distance carrier moved to dismiss the plaintiffs/aggregators' claims on the basis that they lacked standing to sue under Article III of the Constitution. Defendant argued that the aggregators did not meet the standing requirements because they did not suffer an injury-in-fact and did not have a personal stake in the outcome of the litigation. The district court initially agreed and dismissed the plaintiffs' claims with prejudice.

Thereafter, the plaintiffs/aggregators moved the district court to reconsider its decision. Relying in part on a "long line of cases and legal treatises that recognize a well-established principle that assignees



Sander Bak

Mia Korot

for collection purposes are entitled to bring suit where assignments transfer absolute title to the claims," the district court concluded that plaintiffs had standing to bring the lawsuits.<sup>3</sup>

Defendant appealed the district court's decision and the appeal was consolidated with several similar cases. Following several appeals in which the courts addressed an issue unrelated to standing, the Court of Appeals affirmed the district court's orders denying the motion to dismiss on standing grounds.<sup>4</sup> The defendants then appealed the standing issue to the Supreme Court.

#### Supreme Court's Decision

In its 5-4 decision, the majority held that the aggregators have standing to pursue the PSPs' claims for money owed. Defendants argued that the aggregators failed to satisfy Article III of the Constitution's standing requirements because they could not establish (i) injury in fact; (ii) causation and (iii) redressability. Specifically, defendants argued that the assignments for collection did not suffice to transfer the PSPs' injuries. The defendants also argued that the assignees could not satisfy the redressability requirement because the assignees had agreed to remit any litigation proceeds to the PSPs.

Writing for the majority, Justice Stephen Breyer noted that courts, beginning in 17th-century England and continuing with American courts in the 18th and 19th centuries, have long permitted assignees of a claim to bring suit. The Court stated, "[w]e find this history and precedent 'well nigh conclusive' in respect to the issue before us." The Court also considered Article III's standing requirements articulated in more modern cases and determined that the assignees satisfy those requirements. First, the majority held that because the PSPs assigned their claims to the aggregators "lock, stock and

barrel" there is no reason to believe the assignment is anything less than a complete transfer to the assignee of the injury and the resulting claim. Second, the majority held that regardless of what the assignees intend to do with any litigation proceeds if they prevail, "a legal victory would unquestionably redress the injuries for which the aggregators bring suit.... The injuries would be redressed whether the aggregators remit the litigation proceeds to the payphone operators, donate them to charity or use them to build new corporate headquarters."

Defendants also argued that even if the aggregators had standing under Article III, the Court should deny them standing based on prudential limitations, such as where a plaintiff has sought to assert the legal claims of third parties. The Court held that the cases cited were inapposite because they concern plaintiffs who seek to assert the legal rights of others, whereas the aggregators were suing based on injuries suffered by others. Because the PSPs assigned all "rights, title and interest" in claims based on injuries they suffered, the Court held, the aggregators were asserting "legal rights of their own." Defendants also argued that the litigation was nothing more than an attempt by the aggregators to circumvent the class action requirements of Federal Rule of Civil Procedure 23.

The majority dismissed that argument, stating "[b]ecause the federal system permits aggregation by other means, we do not think that the pay phone operators [PSPs] should be denied standing simply because they chose one aggregation method over another."

Writing for the dissent,<sup>5</sup> Chief Justice John G. Roberts argued that the majority opinion is in "flat contravention of our cases interpreting the case-or-controversy requirement of Article III" because the aggregators "have nothing to gain from their lawsuit." According to the dissent, the consequence of the majority's decision is that it has "replaced the personal stake requirement with a completely impersonal one. The right to sue is now the exact opposite of a personal claim—it is a marketable commodity."

#### Practical Implications

Two aspects of the Supreme Court's decision of particular interest to New York practitioners are (i) whether a New York court would have reached the same conclusion and (ii) that New York federal courts have addressed discovery issues arising in lawsuits where the person or entity who suffered the injury is not a party to the action.

**Sander Bak** is a partner at Milbank, Tweed, Hadley & McCloy. **Mia Korot** is an associate at the firm. Disclosure: Milbank was counsel to the plaintiff in *JPMorgan v. Winnick*, one of the cases discussed herein.

