

Frank v. Gaos

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139 S. Ct. 1041 (2019)

In *Frank v. Gaos*, the Supreme Court vacated the United States Court of Appeals for the Ninth Circuit's judgment affirming the district court's approval of a settlement agreement of a class-action claim, and remanded to the lower courts to determine whether or not the plaintiffs established Article III standing.¹ In a class-action suit, plaintiffs must establish standing in order for a court to approve the settlement and render it binding.² The underlying suit was brought against Google by a class of plaintiffs, including Paloma Gaos, who alleged that Google violated the Stored Communications Act ("SCA") by using referrer headers.³ Gaos also asserted numerous state law claims.⁴ The SCA has a provision creating a private right of action, so in concluding that the plaintiffs had standing, the trial court relied on *Edwards v. First American Corp.*, which held that when a statute creates a private right of action, the plaintiff only needs to allege that the defendant violated the statute to establish Article III standing.⁵ However, in light of the Supreme Court's holding in *Spokeo, Inc. v. Robins*, which abrogated the ruling in *Edwards*, the Supreme Court reviewed whether or not the plaintiffs had established an injury sufficient to establish Article III standing.⁶

I. BACKGROUND

The SCA prohibits an internet service provider from knowingly divulging the contents of a communication stored by that service provider to any person or entity⁷ and creates a private right of action for any person to recover from a person or entity that engaged in a violation of the Act.⁸

The complaints alleged that when an Internet user searched certain terms in Google and clicked on a hyperlink to open a webpage listed on the search results page, Google sent information, including the terms of the

1. *Frank v. Gaos*, 139 S. Ct. 1046, 1048 (2019).

2. *Id.* at 1046 (citing Fed. Rule Civ. Proc. 23(e)).

3. *Id.* at 1044.

4. *Id.* at 1044-45.

5. *Frank*, 139 S. Ct. 1044; *Edwards v. First American Corp.*, 610 F.3d 514 (2010) (holding that injury exists wherever a statute gives an individual a statutory cause of action and the plaintiff claims the defendant violated the statute).

6. *Frank*, 139 S. Ct. 1045-46; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) (holding that Article III standing requires a concrete injury even if there is a private right of action in the statute and the plaintiff alleges the defendant violated the statute).

7. Stored Communications Act, 18 U.S.C. §2702(a)(1).

8. *Id.* at §2707(a).

search, to the server that hosted the selected webpage.⁹ This information is contained in a referrer header, and tells the server that the user arrived at the webpage by searching certain terms on Google.¹⁰

In the district court, Google motioned to dismiss the suit for lack of standing.¹¹ The district court denied Google's motion to dismiss the plaintiffs' SCA claims.¹² The district court, relying on *Edwards*, concluded that Gaos had alleged an injury sufficient to establish standing because the SCA created a private right of action and Gaos alleged a violation of the SCA that was specific to her, as the claim was based on a search that Gaos personally conducted.¹³

After the district court ruled on Google's motion to dismiss, the Supreme Court granted certiorari in *Edwards* to determine whether an alleged statutory violation alone can support standing.¹⁴ Google continued to challenge the district court's ruling on its motion, until the Supreme Court dismissed *Edwards* as improvidently granted, at which point Google withdrew its argument that Gaos lacked standing for their SCA claims.¹⁵

Google then negotiated a class-wide settlement with the parties, with terms requiring Google to include certain disclosures about referrer headers on three of its webpages, but allowing Google to continue using referrer headers.¹⁶ Google agreed to pay \$8.5 million, with none of the funds going to absent class members, but distributed to six *cy pres* recipients instead.¹⁷ *Cy pres* refers to the distribution of settlement funds "not amenable to individual claims or meaningful pro rata distribution to nonprofits whose work is determined to indirectly benefit class members."¹⁸ The remainder of the funds would be used to pay administrative fees and attorney's fees.¹⁹

The district court granted preliminary certification of the class and preliminary approval of the settlement, but five class members objected to the settlement, complaining that settlements providing only *cy pres* relief do not comply with the requirements of Rule 23(e) of the Federal Rules of Civil Procedure, among other claims.²⁰ The district court granted final approval of the settlement.²¹ Two of the objecting plaintiffs appealed, and while the case was pending in the Ninth Circuit, the Supreme Court issued its decision in *Spokeo*, which abrogated *Edwards*.²² Notwithstanding the fact that Google

9. *Id.* at 1044.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 1045-55 (citing *First Am. Fin. Corp. v. Edwards*, 564 U.S. 1018, 131 S.Ct. 3022 (2011)).

15. *Id.*

16. *Id.* at 1045.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* (citing Fed. Rule Civ. Proc. 23(e))

21. *Id.*

22. *Id.*

notified the Ninth Circuit of the *Spokeo* decision, the Ninth Circuit, without addressing *Spokeo*, affirmed the district court's ruling.²³

II. ANALYSIS

The Supreme Court granted certiorari to decide whether a class action settlement that provides a *cy pres* award but not direct relief to class members satisfied the requirement under Rule 23(e) that class settlements be "fair, reasonable, and adequate."²⁴ However the Solicitor General filed an *amicus curiae* brief urging the Court to vacate and remand the case to the lower courts to address whether the plaintiffs had standing, in light of *Spokeo*.²⁵

In non-class litigation, litigants can freely arrange settlement agreements on their own terms or voluntarily dismiss their claims without a court order.²⁶ However, in class-action suits, the "claims, issues, or defenses of a certified class – or a class proposed to be certified for purposes of settlement – may be settled, voluntarily dismissed, or compromised only with a court's approval."²⁷ A court cannot approve a class settlement if it lacks jurisdiction to settle the dispute, and a court lacks jurisdiction if no named plaintiff has standing.²⁸

In light of the fact that, since the Supreme Court's holding in *Spokeo*, no court had an opportunity to analyze whether the complaints alleged SCA violations concrete and particularized enough to establish standing, the Supreme Court ordered supplemental briefing from the parties and the Solicitor General to address the issue.²⁹ In those briefs, there were numerous issues of law and fact raised that were not addressed before the Court or at oral arguments.³⁰ The Court concluded the standing question must be resolved in the lower courts, and therefore vacated and remanded the matter for further proceedings, expressly stating that it takes no position as to whether or not the plaintiffs have established standing.³¹

III. DISSSENT (J. THOMAS)

Justice Clarence Thomas dissented, noting that he would reach the merits and find that the plaintiffs had established standing, but reverse the Ninth Circuit's judgment because the *cy pres*-only relief did not provide any meaningful form of relief to the absent class members.³²

23. *Id.*

24. *Id.* (citing Fed. Rule Civ. Proc. 23(e)(2)).

25. *Id.* at 1045-46.

26. *Id.* at 1046 (citing Fed. Rule Civ. Proc. 41 (a)(1)(A)).

27. *Id.* (citing Fed. Rule Civ. Proc. 23(e)) (alterations in original).

28. *Id.* (citing *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, n.20 (1976)).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 1047 (J. Thomas, dissenting).

On the issue of standing, Thomas reasoned that, because they alleged violations of the SCA and violations of state law, the plaintiffs alleged an injury sufficient to establish standing, even in light of *Spokeo*.³³ Although Thomas did not specifically state under which claims the plaintiffs had established standing, he concluded the plaintiffs either established standing under (i) their state law claims, because they were asserting that “private dut[ies]” owed to them “as individuals” had been violated, or (ii) their SCA claims, because the SCA created a private right of action.³⁴

However, Thomas explained he would reverse the Ninth Circuit’s judgment because the *cy pres*-only relief failed to meet numerous requirements of Rule 23 of the Federal Rules of Civil Procedure.³⁵ Namely, the fact that absent class members’ interests were not represented and the fact that the class received no benefit under the settlement rendered the settlement unfair and unreasonable under Rule 23.³⁶

33. *Id.*

34. *Id.* (quoting *Spokeo*, 136 S. Ct. 1540) (alterations in original).

35. *Id.*

36. *Id.* (citing Fed. Rule. Civ. Proc. 23(b)(3), (e)(2), (g)(4)).