Settlement and Compromise

Impact of 'Campbell-Ewald': Unanswered Questions

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April 29, 2016

The fallout from the U.S. Supreme Court's landmark decision in *Campbell-Ewald Co. v. Gomez*[1] continues.

Campbell-Ewald denied class-action defendants the ability to moot an entire class action by making a settlement offer that, if accepted, would have completely satisfied the named plaintiff's claim.[2] Citing hornbook contract law, the court confirmed that "an offer of a bargain by one person to another, imposes no obligation upon the former, until it is accepted by the latter," and an unaccepted offer of judgment falls squarely within this principle.[3] The case resolved inconsistent rulings among district courts within the U.S. Court of Appeals for the Second Circuit regarding the viability of this tactic.

But a new split has already arisen: May a defendant who consents to entry of a judgment against it evade further litigation? How this question is resolved will significantly affect the strategy of defending class actions.

Offers of Settlement

Judge Sandra Feuerstein of the Eastern District of New York recently surveyed the post-Campbell-Ewald landscape in a string of decisions in *Brady v. Basic Research*,[4] a case with facts similar to *Campbell-Ewald*.

Basic Research was sued in a putative class action. While class certification was pending, Basic Research moved to deposit funds with the Clerk of the Court under FED. R. CIV. P. 67. The corporation argued that under *Campbell-Ewald* this would "moot[]…plaintiff's case, as there would then be no case or controversy under Article III sufficient to confer subject matter jurisdiction."[5]

Plaintiff opposed the motion, arguing that Basic Research was misapplying the case. Plaintiff argued that *Campbell-Ewald* "made clear that payment of a named plaintiff's claim in a putative class action does not constitute complete relief." It also argued that allowing a defendant to

moot a plaintiff's claim by depositing the amount of relief sought by that one, individual plaintiff, in this case a mere $400, would wrongly "place Defendants in the driver's seat and allow them to avoid a potential adverse decision by paying a small fraction of their liability to Plaintiffs alone."[6]

Judge Feuerstein, relying heavily on *Campbell-Ewald*, sided with plaintiffs. On Feb. 3, 2016, the court denied Basic Research's Rule 67 motion to deposit funds, stating that under *Campbell-Ewald*, "a would-be class representative with a live claim of her own must be accorded a fair opportunity to show that certification is warranted."[7]

But Basic Research was not deterred. It tried again. This time the company went ahead and wired the $400 to the Clerk and submitted an offer of judgment under Rule 68. Basic Research again sought dismissal, arguing that "Plaintiffs no longer have any live or justiciable claim."[8]

But the result was the same. Judge Feuerstein ruled that *Campbell-Ewald* was "directly on point and mandates denial of [Basic Research's] motion to dismiss for lack of subject matter jurisdiction."[9] Citing *Campbell-Ewald*, she construed plaintiff's proposed judgment as "an unacceptable settlement offer [that] has no force" and "that creates no lasting right or obligation."[10] Defendant again failed to moot the case.

Basic Research reflects the resolution of a split between district courts within the Second Circuit, which had disagreed "on the question of whether an offer of judgment to an individual plaintiff made while a certification motion is pending or before a certification motion is filed moots the putative class action."[11]

A New Split Quickly Arises

Campbell-Ewald actually answered a related but limited question—whether "full settlement offers…that fully compensate[] the plaintiff" would resolve a litigation. The Supreme Court expressly left open the related question of "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"[12]—and that very issue is at play in both *Basic Research* and a March 2016 decision in the Southern District of New York, *Leyse v. Lifetime Entm't Servs*.[13]

As Judge Alvin Hellerstein held in *Leyse*, the "Second Circuit's precedent allow[s] for the entry of judgment for the plaintiff over plaintiff's objections," despite *Campbell-Ewald*.[14] Under this precedent, "judgment and full relief in favor of the plaintiff [are] necessary precursors to the dismissal of an action in the event of an unaccepted settlement offer."[15]

However, according to Judge Hellerstein, the rule stands in the Second Circuit that "once the defendant has furnished full relief, there is no basis for the plaintiff to object to the entry of judgment in its favor, and "[a] plaintiff has no entitlement to an admission of liability."[16] Thus, the court in *Leyse* entered judgment in favor of the defendant after it deposited the full amount sought by plaintiff's individual claim with the Clerk. Under the rationale of *Leyse*, a post-*Campbell-Ewald* defendant still has the ability to stymie potential class-action claims by surrendering a judgment on a named plaintiff's individual claim.

Basic Research and *Leyse* present differing views on the scope of *Campbell-Ewald*. Although it is clear that unaccepted offers of settlement that would have satisfied the claims of a named plaintiff in a putative class action cannot moot the entire case, courts still disagree on whether actually depositing the funds and moving for an entry of judgment may resolve a putative class action.

Fortunately, litigants in the Second Circuit may soon have more clarity. On April 7, 2016, Basic Research moved for an interlocutory appeal, arguing that *Leyse* and *Basic Research* present a new "real and reasonable dispute of the established line of Second Circuit precedent in light of [*Campbell-Ewald*]" that the Second Circuit should resolve.[17] The outcome of this appeal will likely affect class-action defense strategy in this circuit.

Endnotes:

1. *Campbell-Ewald Co. v. Gomez*, No. 14-857, 2016 WL 228345, at *2 (U.S. Jan. 20, 2016).

2. For a more detailed analysis of *Campbell-Ewald*, see "Does Settlement Offer to Named Plaintiff Moot Class Action," New York Law Journal (Jan. 29, 2016).

3. *Campbell-Ewald Co. v. Gomez*, No. 14-857, 2016 WL 228345, at *2 (U.S. Jan. 20, 2016) (citing *Eliason v. Henshaw*, 4 Wheat. 225, 228 (1819).

4. 13-CV-7169(SJF)(ARL), 2016 WL 1322432 (EDNY March 31, 2016).

5. Letter Motion at 2, *Brady v. Basic Research*, No. 2:13-cv-07169-SJR-ARL (EDNY Jan. 21, 2016) (Dkt. # 79).

6. Letter at 1-2, *Brady v. Basic Research*, No. 2:13-cv-07169-SJR-ARL (EDNY Jan. 21, 2016) (Dkt. # 80).

7. Order at 3, *Brady v. Basic Research*, No. 2:13-cv-07169-SJR-ARL (EDNY Jan. 21, 2016) (Dkt. # 81) (citing *Campbell-Ewald*, at *11).

8. Letter at 2, *Brady v. Basic Research*, No. 2:13-cv-07169-SJR-ARL (EDNY Jan. 21, 2016) (Dkt. # 82).

9. Id. See also *Bais Yaakov of Spring Valley v. Graduation Source*, No. 14-CV-3232 (NSR), 2016 WL 1271693, at *2 (S.D.N.Y. March 29, 2016) ("In light of the Supreme Court's holding [in *Campbell-Ewald*], Plaintiff's failure to accept or reject the offer does not moot this case").

10. 2016 WL 1322432.

11. *Franco v. Allied Interstate*, No. 13 Civ. 4053, 2014 WL 1329168, at *3 (S.D.N.Y. Apr. 2, 2014); *Morgan v. Account Collection Tech.*, No. 05-CV-2131 (KMK), 2006 WL 2597865, at *3 (S.D.N.Y. Sept. 6, 2006) ("the district courts are split on the appropriate resolution" of "a Rule 68 offer [that] is made while a Rule 23 motion for certification is pending"). See *Leyse v. Lifetime Entm't Servs.*, No. 13 CIV. 5794 (AKH), 2016 WL 1253607, at *1 (S.D.N.Y. Mar. 17, 2016) (*Campbell-Ewald* "resolved a circuit split and endorsed Second Circuit precedent that had already held that a district court cannot dismiss the plaintiff's complaint on the basis of such an unaccepted settlement offer").

12. *Campbell-Ewald* at *8.

13. No. 13 CIV. 5794 (AKH), 2016 WL 1253607 (S.D.N.Y. March 17, 2016).

14. Id. at *2 (S.D.N.Y. Mar. 17, 2016).

15. Id. (citing *Tanasi v. New All. Bank*, 786 F.3d 195, 200 (2d Cir. 2015), as amended (May 21, 2015), cert. denied, 136 S. Ct. 979 (2016) "(Absent [an] agreement, however, the district court should not enter judgment against the defendant if it does not provide complete relief.")).

16. Id.

17. Memorandum of Law in Support of Defendants' Motion to Amend Court's March 31, 2016 Order to Certify the Order for Interlocutory Appeal Pursuant to 28 U.S.C. §1292(b) and Stay Discovery at 10, *Brady v. Basic Research*, No. 2:13-cv-07169-SJR-ARL (EDNY Jan. 21, 2016) (Dkt. # 89).

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