

508 F.3d 123

United States Court of Appeals,
Third Circuit.

DIRECTV INC, a California corporation

v.

Nelson SEIJAS; Phil Vanasse; Jeff Alfonso;

Robert Allen; Richard Amore; Courtney Anglin;

Brian Appleby; Jerry Wayne Arnold; Scott A.

Williamson; Richard Amore, Third-Party Plaintiffs

v.

Dana Amore; Sandra Cummings,

Third-Party Defendants.

Scott Williamson, Appellant.

No. 05-1682. | Submitted under
Third Circuit | LAR 34.1(A) Sept. 25,
2007. | Opinion Filed Nov. 30, 2007.**Synopsis**

Background: Telecommunications company filed complaint against defendants, claiming illegal interception of satellite transmissions in violation of Federal Communications Act (FCA) and Electronic Communications Privacy Act (ECPA), and claiming illegal possession of pirate access devices in violation of ECPA. The United States District Court for the District of New Jersey, [Stanley R. Chesler, J.](#), granted company summary judgment for defendant's failure to respond to discovery requests. Defendant appealed.

[Holding:] The Court of Appeals, [Roth](#), Circuit Judge, held that FCA provides private right of action as civil remedy against piracy of airborne transmissions.

Affirmed.

West Headnotes (5)

[1] Federal Courts

🔑 **Summary judgment**

Court of Appeals reviews the district court's grant of summary judgment de novo.

[8 Cases that cite this headnote](#)

[2] Federal Courts

🔑 **Statutes, regulations, and ordinances, questions concerning in general**

Court of Appeals' review of questions of statutory interpretation is plenary.

[2 Cases that cite this headnote](#)

[3] Federal Courts

🔑 **In general; necessity**

Arguments not raised before the district court are waived on appeal.

[6 Cases that cite this headnote](#)

[4] Federal Courts

🔑 **Parties, process, and notice**

Defendant waived claims that district court erred in permitting joinder of multiple defendants and in granting injunctive relief for telecommunications company, in suit alleging that defendant illegally intercepted satellite transmissions in violation of Federal Communications Act (FCA) and Electronic Communications Privacy Act (ECPA), and illegally possessed pirate access devices in violation of ECPA, since defendant failed to raise claims before district court. Communications Act of 1934, § 705, [47 U.S.C.A. § 605](#); [18 U.S.C.A. §§ 2511\(1\)\(a\), 2512\(1\)\(b\)](#).

[2 Cases that cite this headnote](#)

[5] Telecommunications

🔑 **Civil Liability for Unauthorized Interception or Viewing**

Federal Communications Act (FCA) provides a private right of action for violations of the statute's prohibition of piracy of airborne transmissions. Communications Act of 1934, § 705, [47 U.S.C.A. § 605](#).

[2 Cases that cite this headnote](#)

Attorneys and Law Firms

*124 [John W. Gibson](#), Esquire, Pittsburgh, PA, for Appellant.

[Howard R. Rubin](#), Esquire, [Marc J. Zwillinger](#), Esquire, Sonnenschein Nath & Rosenthal, LLP, Washington, D.C., [Jonathan J. Sobel](#), Esquire, Galerman & Tabakin, Philadelphia, PA, [Marc E. Wolin](#), Saiber, Schlesinger, Satz & Goldstein, Newark, NJ, for Appellee.

Before: [AMBRO](#), [JORDAN](#) and [ROTH](#), Circuit Judges.

OPINION

[ROTH](#), Circuit Judge:

Defendant Scott Williamson appeals the District Court's grant of summary judgment in favor of DIRECTV, Inc., finding that Williamson violated the Federal Communications Act, [47 U.S.C. § 605](#), and the Electronic Communications Privacy Act of 1986, [18 U.S.C. § 2511](#). This appeal presents the question of whether there is a private right of action for the unlawful interception of encrypted satellite transmissions under those statutory provisions. We hold that there is, and we will affirm the order of the District Court.

I. Factual and Procedural Background

DIRECTV filed a complaint against Williamson and eight other defendants in the United States District Court for the District of New Jersey on May 23, 2003. In Counts I and II of its Complaint, DIRECTV alleged that Williamson and the other defendants had illegally intercepted DIRECTV's satellite transmissions in violation of the Federal Communications Act ([47 U.S.C. § 605\(a\)](#)) and the Electronic Communications Privacy Act ([18 U.S.C. § 2511\(1\)\(a\)](#)). In Count III, DIRECTV claimed that the defendants illegally possessed pirate access devices in violation of the Electronic Communications Privacy Act ([18 U.S.C. § 2512\(1\)\(b\)](#)).

Williamson responded to DIRECTV's complaint in a November 24, 2003, letter, rejecting all allegations and claiming that any devices purchased were not used for illegal activities. On September 9, 2004, DIRECTV sent discovery requests to Williamson's address via certified mail. The parties discussed those requests with the Magistrate Judge during an October 26, 2004, teleconference.

Months passed, and Williamson failed to respond to DIRECTV's discovery requests. *125 On December 23, 2004, DIRECTV moved for summary judgment on Counts I and II. Williamson opposed on the sole ground that he had not received DIRECTV's requests for admission. The District Court issued an Opinion and Order granting DIRECTV's motion, awarding DIRECTV statutory damages, attorneys' fees, and injunctive relief. In its Opinion and Order, the District Court found that Williamson had not "acted in good faith or without fault" in failing to respond to DIRECTV's discovery requests. Williamson now appeals.

II. Discussion

[1] We have jurisdiction over this appeal from a final judgment of the District Court pursuant to [28 U.S.C. § 1291](#). We review the District Court's grant of summary judgment de novo. *CAT Internet Servs. Inc. v. Providence Washington Ins. Co.*, 333 F.3d 138, 141 (3d Cir.2003).

[2] [3] [4] The issues that we must consider in this appeal are whether DIRECTV has a private right of action under the Federal Communications Act, [47 U.S.C. § 605](#), and the Electronic Communications Privacy Act of 1986, [18 U.S.C. § 2511](#).¹ Our review of questions of statutory interpretation is plenary. *DIRECTV, Inc. v. Pepe*, 431 F.3d 162, 166 (3d Cir.2005).

We held in *DIRECTV, Inc. v. Pepe*, 431 F.3d 162 (3d Cir.2005), that private parties may bring an action for damages and injunctive relief for a violation of [Section 2511](#) of the Electronic Communications Privacy Act. *Id.* at 167. Our reasoning was based on the plain language of [Sections 2511\(1\)\(a\)](#) and [2520](#). Other circuits have reached the same conclusion. *DIRECTV, Inc. v. Bennett*, 470 F.3d 565 (5th Cir.2006); *DIRECTV, Inc. v. Nicholas*, 403 F.3d 223 (4th Cir.2005).

[5] We did not have to address directly in *Pepe* whether [Section 605](#) of the Federal Communications Act provides a private right of action. But in describing DIRECTV's claims in that case, we stated, "[Section 605](#) provides a civil remedy for the unauthorized use or publication of various wire or radio communications, including encrypted satellite broadcasts." *Pepe*, 431 F.3d at 164. We now hold that the Federal Communications Act, [47 U.S.C. § 605](#), provides a private right of action for violations of the statute's prohibition of piracy of airborne transmissions.

The plain language of [Section 605](#) makes clear that it provides private parties with such a cause of action. [Section 605\(a\)](#) (the subject of Count I of DIRECTV's complaint) provides, in relevant part, "No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto." [47 U.S.C. § 605\(a\)](#). [Section 605\(e\)\(3\)\(A\)](#), in turn, provides, "*Any person aggrieved by any violation of subsection (a) of this section ... may bring a civil action in a United States district court...*"

[47 U.S.C § 605\(e\)\(3\)\(A\)](#) (emphasis added). [Section 605\(e\)](#) plainly authorizes a private action for violations of [Section 605\(a\)](#).

IV. Conclusion

For the reasons stated above, we conclude that there is a private right of action *126 available under [Section 605\(a\)](#) of the Federal Communications Act, [47 U.S.C. § 605\(a\)](#). Accordingly, we will **affirm** the District Court's order granting summary judgment in favor of DIRECTV.

Footnotes

- 1 It is well established that arguments not raised before the District Court are waived on appeal. [Belitskus v. Pizzigrilli](#), 343 F.3d 632, 645 (3d Cir.2003). On appeal, Williamson claims the District Court also erred in permitting the joinder of multiple defendants and in granting injunctive relief. Williamson did not raise those claims before the District Court, and as such they have been waived.