

United States Court of Appeals
For the Eighth Circuit

No. 17-1981

Joshua Seth Brenner

Plaintiff - Appellant

v.

American Education Services (AES)

Defendant - Appellee

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: November 15, 2017

Filed: November 21, 2017

[Unpublished]

Before BENTON, BOWMAN, and MURPHY, Circuit Judges.

PER CURIAM.

Joshua Seth Brenner sued American Education Services (AES), alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227. Brenner

appeals the district court's¹ adverse grant of summary judgment. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Reviewing the record de novo in the light most favorable to the non moving party, this court concludes that summary judgment was proper. *See Murchison v. Rogers*, 779 F.3d 882, 886-87 (8th Cir. 2015) (standard of review). Brenner failed to provide probative evidence that AES used an automatic telephone dialing system, or a prerecorded or artificial voice to make calls to his cell phone, an essential element of his claim. *See* 47 U.S.C. § 227(b) (prohibiting calls to cell phones using automatic telephone dialing system or artificial or prerecorded voice without prior express consent of called party); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (summary judgment is proper “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial”); *Moody v. St. Charles Cty.*, 23 F.3d 1410, 1412 (8th Cir. 1994) (to defeat summary judgment, non-moving party must substantiate allegations with sufficient probative evidence that would allow finding in his favor based on more than conjecture, speculation, or his own naked assertions).

The judgment is affirmed. *See* 8th Cir. R. 47B.

¹The Honorable Henry E. Autrey, United States District Judge for the Eastern District of Missouri.