



Civil Resolution Tribunal

Date Issued: September 14, 2018

File: SC-2018-000303

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Muscalu v. Freedom Mobile Inc.*, 2018 BCCRT 524

B E T W E E N :

Bogdan Muscalu

APPLICANT

A N D :

Freedom Mobile Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Bogdan Muscalu applies for default judgement against the respondent Freedom Mobile Inc.
2. In his Dispute Notice, the applicant claims the respondent “harassed” him for over 20 months to pay money for services it failed to provide.

3. The respondent did not file a Dispute Response despite being provided with notice by registered mail, on August 3, 2018, to its attorney as listed on a company search, pursuant to Civil Resolution Tribunal (tribunal) Rule 63. I therefore find that the respondent is in default.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The main issue on this application for default judgement is what remedy is appropriate based on the evidence.

EVIDENCE AND ANALYSIS

9. Liability is generally assumed on a default application. An applicant seeking non-debt relief must provide sufficient evidence to prove the damages claimed. In the case of debt claims, an amount for the debt must be specified. I have reviewed all of the applicant's evidence.
10. In his January 16, 2018 Dispute Notice, the applicant says
 - (a) the respondent interrupted his cellular service on Christmas Day 2015 due to a "technical error",
 - (b) a month later the respondent imposed roaming charges, even though the applicant was using his cell phone at home only,
 - (c) the respondent frequently interrupted his cellular service for technical reasons, and
 - (d) the respondent charged him for service beyond the set credit limit on the account.
11. Because liability is assumed on an application for default judgement, I accept that the applicant's cellular service provided by the respondent was interrupted on Christmas Day 2015, and on several other occasions. I also accept that roaming charges were imposed when the applicant was at his home address, inside the respondent's local calling area.
12. As well, the applicant says, and the emails filed in evidence support, that he was charged beyond the \$100.00 limit on his account. The emails also show that the

respondent corrected the overage by applying a credit of \$4.04, which fully credited the overcharge, on January 11, 2016.

13. In terms of damages, the applicant's claims are as follows
 - (a) \$2,000.00 for general damages for "harassment, stress, frustration, bitterness, feeling affect, grief, mental and emotional distress",
 - (b) \$500.00 for "consequential damages" for time spent on the dispute, and
 - (c) \$2,500.00 for "punitive damages" for "wanton conduct, malicious practices" and "oppressive nature".
14. Turning to the remedy sought, damages for mental distress are only awarded where there is independent evidence of the harm. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224., which I find helpful though not binding on me, where there is no medical evidence regarding mental distress, the claim must be dismissed.
15. The applicant did not provide any independent medical evidence of his mental distress claim. Therefore, I dismiss the \$2,000 claim for harassment, stress, frustration, bitterness, feeling affect, grief, mental and emotional distress.
16. While the applicant mentions roaming charges in his Dispute Notice, he did not include a claim for the roaming charges in his remedies sought. As well, he failed to file in evidence any cellular phone bills demonstrating the amount he was overcharged, if any, versus the amount he was paying for the provided services. I therefore dismiss his claim regarding roaming charges, because the respondent did not have notice of it, and I do not have before me whatever amount was said to be charged in error.
17. The tribunal generally does not award parties their time spent dealing with the dispute, consistent with tribunal rule 132 which provides that, except in extraordinary cases, the tribunal will not order one party to pay another for a representative's time spent on a dispute. I dismiss the applicant's claim for

\$500.00 for what he calls consequential damages, representing time spent dealing with the dispute.

18. Generally speaking, punitive damages are reserved for malicious and high-handed conduct, and I find the evidence before me does not rise to that level. I dismiss the claim for \$2,500.00 for punitive damages.
19. For these reasons, I dismiss the applicant's claims and his dispute.

Julie K. Gibson, Tribunal Member