



Civil Resolution Tribunal

Date Issued: March 8, 2019

File: SC-2018-003349

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *ATAC Law Corporation v. Cellular Solution Inc. et al*, 2019 BCCRT 286

B E T W E E N :

ATAC Law Corporation

APPLICANT

A N D :

Cellular Solution Inc. and Bell Canada

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about charges for cellular telephone services (cell service). In November 2017, the applicant, ATAC Law Corporation, entered into a contract for cell service with the respondent Bell Canada (Bell). The contract was negotiated on

behalf of Bell by TG, an employee or agent of the respondent Cellular Solution Inc. (Cellular Solution).

2. The applicant seeks \$5,000 in damages for negligent misrepresentation, breach of contract, and a breach of section 5 of the *Business Practices and Consumer Protection Act* (BPCPA).
3. Bell says there was a misunderstanding about the applicant's eligibility for a \$600 credit at the time the contract was negotiated, which Bell remedied by crediting \$752 to the applicant's account. Bell also says the damages sought by the applicant are excessive.
4. The applicant is represented by Dan Griffith, a lawyer and the applicant's principal. Bell is represented by Laura Dougan, an employee. The respondent Cellular Solution did not provide a response, although served with a copy of the Dispute Notice. I will address both respondents' liability below.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 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 has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018

BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Are the respondents liable for a breach of the BPCPA, negligent misrepresentation, or a breach of contract?
 - b. If the respondents are liable, what damages are appropriate?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. On November 16, 2017, the applicant entered into a 2-year cell service contract with Bell. Under the terms of that contract, the applicant would pay a fixed monthly amount for cell service, including telephone calls, data, text messaging, and related services. The details of the provided services are not in dispute. The applicant subsequently added additional hardware and features, which were not part of the original contract.

12. The applicant says that in negotiating the contract, TG promised that \$600 in “port credits” would be applied to the applicant’s bill. This is confirmed in TG’s emails to the applicant. On December 15, 2017, after an inquiry for the applicant, TG said the port credits would be applied to the applicant’s second bill. The evidence shows that the port credits were not fully applied until July 11, 2018, after many complaints from the applicant to both Bell and TG.
13. The applicant also says Bell charged it for uncontracted and undisclosed fees, including a \$25 connection fee, call forward “pay-per-use” fees, and an extra \$13 month added to its base monthly fee.
14. The applicant does not request reimbursement for these extra fees and port credits in this dispute, as it admits that Bell credited the amounts to its account after the dispute was filed. However, the applicant seeks compensation for actual losses and consequential damages.

Liability of Cellular Solution

15. As previously stated, the respondent Cellular Solution did not respond to the Dispute Notice. Under the tribunal’s rules, a respondent located outside BC (as is the case with Cellular Solution) must respond within 30 days of receiving the Dispute Notice, as indicated on the Dispute Response Form. Thus, Cellular Solution is in default. Normally, a respondent in default is presumed to be liable. However, I find that this presumption is rebutted in this case, because the applicant does not argue that the alleged overbilling at issue was committed by TG or Cellular Solution. I also find that TG did not misrepresent the billing amounts or port credits. Rather, the evidence indicates that TG believed the port credits were forthcoming, and did not have control over when they were paid out. I also note that in its submissions to the tribunal, the applicant says that Bell violated the BPCPA and committed negligent misrepresentation and breach of contract. The applicant says the breaches were Bell’s, and not Cellular Solution’s.

16. For these reasons, I find Cellular Solution is not liable, and I dismiss the applicant's claims against Cellular Solution.

Liability of Bell – BPCPA

17. The applicant seeks damages for Bell's alleged breach of section 5(1) of the BPCPA. Section 5(1) says a "supplier must not commit or engage in a deceptive act or practice in respect of a consumer transaction".

18. Bell says section 5(1) of the BPCPA does not apply to the cell service contract between it and the applicant because it was not a "consumer transaction". I agree. The wording of section 5(1) specifically indicates that it applies only to a "consumer transaction". Section 1 of the BPCPA defines "consumer transaction" as follows:

- a. a supply of goods or services or real property by a supplier to a consumer for purposes that are primarily personal, family or household, or
- b. a solicitation, offer, advertisement or promotion by a supplier with respect to a transaction referred to in paragraph (a)

19. The applicant is a law firm, and the email correspondence between it and TG shows that the purchased cell services were primarily for business use. For this reason, the cell service contract is not a consumer transaction, and section 5 of the BPCPA does not apply.

20. Also, as submitted by Bell, the tribunal does not have authority to award damages under the BPCPA: see *Donaldson v. Jasjit Rai (Doing Business As Joi Works Consulting)*, 2019 BCCRT 134 at para. 8.

21. For these reasons, I dismiss the applicant's claim under the BPCPA.

Negligent Misrepresentation and Breach of Contract

22. The applicant seeks \$5,000 in damages for negligent misrepresentation and breach of contract. Bell denies that it committed negligent misrepresentation or breach of

contract. However, it admits that it promised \$600 in port credits in November 2017, which were not provided in a timely manner. Bell says that any liability for this late payment was fully remedied when it applied credits totalling \$752 to the applicant's account in May, June and July 2018.

23. The applicant admits that it was "fully credited", although it notes that this did not occur until after it filed this dispute with the tribunal.
24. I find that it is not necessary to determine whether Bell is liable for negligent misrepresentation or breach of contract because the applicant has not proven any entitlement to damages.
25. The applicant claims damages for both actual losses and consequential damages. The applicant did not provide any invoices, receipts, timesheets, or other business records to support these claims.
26. Regarding actual losses, as noted above the applicant admits the Bell eventually provided full credit through its \$752 in billing credits. To order further payment would constitute double recovery.
27. The applicant says its directors and staff spent over 30 hours dealing with the billing dispute. The applicant did not provide any records to substantiate this claim, other than a series of emails which I find do not reflect 30 hours of work. Also, the tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees.
28. The applicant did not provide particulars of any other actual losses, so I find it has not met the burden of proving this claim.

Consequential Damages

29. The applicant says that because its directors and employees spent over 30 hours dealing with the billing matter, the applicant lost approximately \$10,500 in potential billings. I find the applicant has not proven this claim. As noted above, it provided no

evidence to substantiate the assertion about the 30 hours of work. Also, it has not provided records to establish that those same individuals would have billed customers at \$350 per hour, as claimed. I find that these claimed losses are speculative, rather than proven.

30. I also find the applicant had a duty to mitigate its losses, which was not met. I find that in the circumstances, it was not reasonable and foreseeable to Bell that the applicant would forego over \$10,000 in business income in order to pursue a billing dispute worth less than \$1,000. I therefore deny the applicant's claim for business losses.

Aggravated and Punitive Damages

31. The applicant seeks aggravated and punitive damages for Bell's breach of section 5(1) of the BPCPA. As noted above, the tribunal has no authority to order damages under the BPCPA. Also, numerous prior tribunal and court decisions have noted that aggravated and punitive damages are reserved for malicious and high-handed conduct, and are rare in contract cases: *Victoria Window Cleaning v. Coastal Cleaning Services/Coast Cleaning Services*, 2018 BCCRT 501; *Benda v. Cao et al*, 2018 BCCRT 323; *Gibson v F.K. Developments Ltd.*, 2017 BCSC 2153.
32. I find Bell's conduct in these disputed billing matters does not rise to the level required to attract punitive damages.

Summary

33. For all these reasons, I find the applicant has not met the burden of proving its entitlement to damages. I dismiss the applicant's claims.
34. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The applicant was not successful in this dispute. However, Bell did not provide all the promised bill credits until July 11, 2018, which

is after the applicant filed the Dispute Notice. For that reason, I find the applicant is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

35. I order that within 30 days of the date of this decision, Bell must pay the applicant \$175 for tribunal fees. This payment shall not be made by billing credit.
36. I dismiss the applicant's other claims against Bell.
37. I dismiss the applicant's claims against Cellular Solution.
38. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
39. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Kate Campbell, Tribunal Member