



Civil Resolution Tribunal

Date Issued: October 7, 2020

File: SC-2020-001921

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Creaser v. Telus Communications Inc.*, 2020 BCCRT 1132

B E T W E E N :

PHILLIP CREASER

APPLICANT

A N D :

TELUS COMMUNICATIONS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. The respondent, Telus Communications Inc. (Telus), provided cable television and internet services to the applicant, Phillip Creaser, in 2015. Mr. Creaser says Telus incorrectly assigned his account to a collection agency, even though Telus had admitted Mr. Creaser owed no money. He says Telus' mistake damaged his credit rating which resulted in Mr. Creaser being denied financing and requiring a

cosignatory on a loan. He claims \$1,000 for embarrassment, \$1,000 for time lost from his business to try to correct Telus' alleged error, and \$3,000 for a down payment for a new loan.

2. Telus acknowledges that it sold Mr. Creaser's outstanding account to a collection agency in 2019 but says it was correct in doing so. Telus says Mr. Creaser owed Telus for services provided and a gift termination fee from 2015, even though a Telus agent told Mr. Creaser the fees had been charged in error. Telus also says Mr. Creaser has not proven his claimed damages. Telus asks that the dispute be dismissed.
3. Telus is represented by AH, an employee. Mr. Creaser represents himself.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.
8. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers is not within its jurisdiction. As discussed in the non-binding but persuasive decision in *Meikes v. Fido Solutions Inc.*, 2020 BCCRT 176, actions for a breach of contract to provide telecommunications services or for damages in relation to a rate charged by a telecommunications carrier, should be resolved by the Canadian Radio-television Telecommunications Commission (CRTC), under the federal *Telecommunications Act* (TA). The TA applies to internet and cable television service providers.
9. In this particular dispute, I find the issue is whether Telus was negligent in referring Mr. Creaser's allegedly non-existent debt to a collection agency. There is no suggestion that this is a rate dispute, or a dispute about the provision of, cost of, or payment for telecommunication services. Rather, the dispute is solely around Telus' assignment of Mr. Creaser's account to a collection agency. For this reason, I find the decision in *Meikes* is distinguishable. I find the CRTC would not be a more appropriate forum to resolve this dispute and find the dispute falls within the CRT's small claims jurisdiction.
10. Next, Mr. Creaser objects to late evidence submitted by Telus and says that it should be excluded from this dispute. Under the CRTA and the CRT rules, I have flexibility and discretion to accept evidence I consider relevant, as noted above. Telus' late evidence is an index which includes excerpts from documents it previously submitted. Mr. Creaser had the opportunity to view and respond to Telus' original documents and the index it submitted late. So, I find there is no actual prejudice to Mr. Creaser in allowing the late evidence, and I do so. In any event, I find nothing turns on the Telus' new evidence.

ISSUE

11. The issue in this dispute is whether Telus incorrectly assigned Mr. Creaser's account to a collection agency and, if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this one Mr. Creaser, as the applicant, must prove his claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains my decision.
13. Telus entered into a 3-year agreement with Mr. Creaser on March 25, 2015 for home internet and TV services. It installed those services at Mr. Creaser's house at address A on April 10, 2015. On April 16, 2015, Telus gave Mr. Creaser a TV set as a promotional gift, as part of the agreement. None of this is disputed.
14. On May 5, 2015 Mr. Creaser cancelled his agreement with Telus as he was moving and no longer needed the services. As Mr. Creaser cancelled the agreement within the first 30 days, Telus waived its cancellation fee. Mr. Creaser gave Telus his new address (address B). None of this is disputed.
15. Mr. Creaser says Telus incorrectly assigned his 2015 account to a collection agency as he owed Telus no money. Even though he did not use these words, I infer Mr. Creaser argues that Telus was negligent in assigning his account to collections when he did not owe any money. For the reasons set out below, I find Mr. Creaser did owe Telus money from 2015 and so Telus was not negligent in assigning his account to a collection agency.
16. Based on Telus' May 24, 2015 invoice, I find it charged Mr. Creaser \$667.26 for a "gift termination fee". According to Telus' internal policy, a gift termination fee is charged to a customer who cancels a term contract before the term is finished, and after receiving a promotional gift. Here, the gift termination fee applied because Mr. Creaser cancelled the 3-year agreement before its expiry but retained the TV. The fee is calculated as a percentage of the contract price and the number of months in

the contract's term. I find Telus correctly calculated the value of the gift termination fee for Mr. Creaser's contract.

17. Mr. Creaser denies he owes any money to Telus. He says that when he terminated his cable and internet in 2015, the Telus agent told him that Telus would waive the cancellation fee. Mr. Creaser recalls that he specifically asked the Telus agent whether he would have to pay for, or return, the promotional TV. Mr. Creaser recalls that the Telus agent told him that no money was owing and that his account was closed.
18. Telus provided a copy of its customer client notes for Mr. Creaser, which confirm that Mr. Creaser spoke with a Telus agent on May 5, 2015 and asked to cancel his account. According to the notes, the agent told Mr. Creaser that Telus would waive its cancellation fee. Based on Telus' internal policy, I find a cancellation fee is a fee for cancelling a contract before the end of the term. It is separate from the gift termination fee.
19. Telus' client notes do not mention the TV set or promotional gift, or any discussion about a gift termination fee. So, the notes do not help me determine what was said about the TV set on May 5, 2015.
20. According to Telus' April 24, 2015 invoice, it billed Mr. Creaser \$113.08 for cable and internet services from April 10 to May 24, 2015. Based on Telus' further invoices from May 24 to August 24, 2015, I find Mr. Creaser did not pay the April 24, 2015 bill for \$113.08. Mr. Creaser does not dispute this. I find it unlikely that the Telus agent would tell Mr. Creaser on May 5, 2015 that he owed Telus no money, given that Mr. Creaser had not paid his most recent bill.
21. Mr. Creaser denies receiving any of Telus' invoices and says he did not know of the Telus debt until he was denied vehicle financing on January 4, 2020.
22. The April 14, 2015 invoice was sent to address A. Mr. Creaser does not explain when he moved from address A, whether he had his mail forwarded or why he might not have received that invoice. The May, June, July, and August 2015 invoices were all

sent to address B. Mr. Creaser does not provide any reason why he might not have received 4 separate invoices which were sent to him at a mailing address he provided to Telus. He did not suggest that the address was incorrect, or that he moved again from address B. On balance, I find Mr. Creaser has not proven that he did not receive any of Telus' April 24 to August 24, 2015 invoices. So, I find it unlikely that Mr. Creaser was unaware that Telus had billed him for services provided and for the gift termination fee.

23. I find it unreasonable for Mr. Creaser to believe he owed Telus no money at all for television and internet services provided between April 10 and May 24, 2015. On balance, I find Mr. Creaser's recollection of the May 5, 2015 conversation is not likely and not reasonable. So, I place little weight on Mr. Creaser's recollection of being told he did not have to return, or pay for, the promotional TV Telus provided, even though he cancelled the contract that led to his receiving that TV.
24. Based on the August 24, 2015 invoice, I find Telus charged Mr. Creaser \$113.08 for internet and cable services, \$667 for a gift termination fee, and accrued interest, for a total charge of \$912.97.
25. Mr. Creaser says that he spoke to a Telus agent in January 2020 who explained that Telus had incorrectly charged Mr. Creaser a cancellation fee in 2015. Telus' client history notes confirm that Mr. Creaser spoke with a Telus account manager, who determined the 2015 fee was a cancellation fee, even though that had been waived in 2015. It is unclear from the notes whether the account manager reviewed Mr. Creaser's 2015 invoices.
26. Telus' notes indicate that a different Telus agent told Mr. Creaser, in January 2020, that Mr. Creaser's outstanding debt was partly due to a gift termination fee which was correctly charged to Mr. Creaser in 2015. While I accept that Telus told Mr. Creaser that the outstanding account was a mistake, I also find it told Mr. Creaser that the outstanding account was valid.

27. Mr. Creaser relies on Telus' January 28 and February 28, 2020 letters in which it writes that Telus erred in assigning Mr. Creaser's account to a collection agency. It is undisputed that Telus reversed the entire \$912.97 it charged Mr. Creaser and has withdrawn Mr. Creaser's Telus account from the collection agency. I agree with Mr. Creaser that Telus' letters acknowledge that it made a mistake in assigning Mr. Creaser's account to the collection agency. However, I do not find those letters, or Telus' decision not to pursue the outstanding account, are necessarily determinative of Telus' negligence.
28. I agree with Telus that the Telus agent who reversed the charges and wrote the January and February 2020 letters mistakenly thought the 2015 charges were cancellation fees, when the charges were for services provided plus a gift termination fee, as set out in the 2015 invoices. So, I find Telus' decision to reverse the \$912.97 charges and its letters were errors Telus made in Mr. Creaser's favour.
29. In summary, I find Telus correctly charged Mr. Creaser for cable and internet services that Mr. Creaser received the benefit of. I further find Telus correctly charged Mr. Creaser for a gift termination fee for the promotional TV set he also received the benefit of. Even though a Telus account manager admitted to making a mistake in assigning Mr. Creaser's account, I find that admission is not determinative of Telus' negligence in sending the account to collections, given the other evidence before me. On balance, I find Telus was not negligent in assigning Mr. Creaser's account to a collection agency as Mr. Creaser had failed to pay for services provided and the gift termination fee.
30. As Telus was not negligent, Mr. Creaser is not entitled to any damages. Even if Telus were negligent, I would have found that Mr. Creaser failed to prove his damages.
31. In particular, in his submissions Mr. Creaser admits the overdue Telus account was likely not the only thing which caused his January 4, 2020 vehicle financing application to be denied. Mr. Creaser provided screenshots of his credit rating score increasing between February and June 2020. Despite the increase, Mr. Creaser's credit rating remained "poor", according to the screenshots. Further, Mr. Creaser did

not prove when the collection agency removed the Telus debt from his credit history and whether that was what caused his credit rating to improve. On balance, I find Mr. Creaser has failed to prove that he would have received the vehicle financing, or any other credit opportunities, but for the 2015 Telus debt on his credit history. I would have dismissed Mr. Creaser's \$3,000 claim for a loan down payment in any event.

32. I also find Mr. Creaser's claim for embarrassment to be a claim for mental distress. As discussed in *Eggberry v. Horn et al*, 2018 BCCRT 224, claims for mental distress must be dismissed when there is no independent medical evidence. Although prior CRT decisions are not binding on me, I agree with and adopt the reasoning in *Eggberry*. Mr. Creaser provided no evidence of mental distress and so even if Telus had been negligent, I would have dismissed his \$1,000 claim for embarrassment.

33. Next, the CRT generally does not award damages for time spent dealing with their disputes, except in extraordinary cases. There is no suggestion of extraordinary circumstances in this dispute. So, I would have dismissed Mr. Creaser's claim for \$1,000 for time spent in any event.

34. Under section 49 of the CRTA and tribunal rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. However, as Mr. Creaser was unsuccessful in this dispute, I dismiss his claim for CRT fees. Telus did not pay fees or claim expenses.

ORDER

35. I dismiss Mr. Creaser's claims and this dispute.

Sherelle Goodwin, Tribunal Member