



Civil Resolution Tribunal

Date Issued: December 14, 2020

File: SC-2020-003501

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tang v. Rogers Communications Canada Inc.*, 2020 BCCRT 1408

BETWEEN:

SUI LIN TANG and YAN PUI CHEUNG

APPLICANTS

AND:

ROGERS COMMUNICATIONS CANADA INC., FIDO SOLUTIONS
INC. and LOBLAW COMPANIES LIMITED LES COMPAGNIES
LOBLAW LIMITEE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about cellular telephone service agreements. The applicants, Sui Lin Tang and Yan Pui Cheung, say that the respondents, Loblaw Companies Limited Les Compagnies Loblaw Limitee (Loblaw), Rogers Communications Canada Inc.

(Rogers), and Fido Solutions Inc. (Fido), engaged in deceptive business practices and induced them to sign agreements that did not contain the terms they expected. The applicants say that they have suffered losses as a result, and ask that the respondents pay them a total of \$2,915.20 in contract-related and punitive damages.

2. The respondents each deny that they are responsible for any of the applicants' claims, and say that they acted reasonably and in good faith when dealing with the applicants.
3. Ms. Tang represents the applicants. The respondents are represented by employees. The same employee represents Rogers and Fido, and provided a single set of submissions for those respondents.

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 CRT considers appropriate.
8. Under section 10 of the CRTA, the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues
9. The applicants asked for an order that the respondents stop violating the policies of the Canadian Radio-television and Telecommunications Commission (CRTC). Ordering someone to do or not do something is known as injunctive relief. This type of relief is outside the CRT's small claims jurisdiction except where permitted by section 118 of the CRTA. I find that the relief sought by the applicants is not included in the scope of section 118, and therefore decline to consider this remedy.

ISSUES

10. The issues in this dispute are:
 - a. Whether the CRT should refuse to resolve any of the applicants' claims,
 - b. Whether any of the respondents are responsible for the applicants' claimed damages related to their contracts,
 - c. Whether any of the respondents are responsible for the applicants' claimed punitive damages.

EVIDENCE AND ANALYSIS

11. In a civil dispute like this, the applicants bear the burden of proof on a balance of probabilities. The applicants, Rogers, and Loblaw provided evidence and submissions in support of their positions. The applicants' evidence included audio recordings of several telephone conversations, but I was unable to consider 3 of these recordings as the conversations were not held in English and no translations were

provided as required by CRT rule 1.7(5). While I have considered the remainder of the information provided by the parties, I will refer to only what is necessary to provide context to my decision.

12. The parties did not provide specific explanations in their submissions about the relationships between the parties and other entities described in the evidence. The evidence before me suggests that, although they are separate corporate entities, Fido is operated by Rogers. The evidence also suggests that Loblaw is associated with The Real Canadian Superstore's The Mobile Shop (TMS), which is where the applicants made their cellular telephone contracts.
13. The applicants say that the respondents gave them inaccurate information about their cellular phone plans. They say that, as a result of this information, they signed 2-year fixed term contracts for service with Fido for 2 of their telephone lines. These agreements included a term that Fido would provide services in accordance with Rogers' terms of service. The agreements also contained an acknowledgment that the applicants had read, understood and agreed to all the details in the agreement. In addition, the agreement included the applicants' acknowledgment that they were making changes to their accounts.
14. The applicants say they went through the agreements after signing them, and realized that the contracts did not contain the terms they had expected. In particular, they were concerned about not receiving monthly credits for additional lines and the availability of international long-distance minutes. They returned to TMS and spoke to a Fido representative. As a result of this conversation, they signed new agreements to change their plans from the "medium" to the "small" plan. The applicants say they also signed a Fido contract for a third telephone line. This agreement also contained the acknowledgments described above.
15. Once again, the applicants say they later noted that the terms of the agreements they had signed did not reflect their understanding. They tried to come to a resolution with Fido, but were unsuccessful.

16. In January of 2019, the applicants made a complaint to the Commission for Complaints for Telecom-Television Services (CCTS) about their belief that the respondents had violated the CRTC's policies. The CCTS is an independent body that addresses complaints about telecommunications services providers, including complaints about contracts, billing and credit issues, and service delivery.
17. The applicants say that, on June 7, 2019, the CCTS advised them that it had determined that there was no fault with Fido's actions in terms of not applying discounts or long distance features, determining the cost of a monthly plan at the completion of a fixed term, or pricing of the devices. The CCTS representative stated that further investigation of the complaint was not warranted. An extract from this email is included in the applicants' evidence.
18. The applicants submit that the CCTS made "lots of mistakes", did not investigate the evidence they provided, did not consider "the fact that [they] were deceived", and did not interpret the CRTC's policies properly. Therefore, the applicants say they do not accept or agree with the CCTS's decision.
19. According to the applicants, the respondents violated the described CRTC policies with respect to contract cancellation and extension, as well as device subsidies. The applicants say that the respondents engaged in dishonest business practices, and made false statements about the contracts' terms. The applicants say that, as a result of the respondents' actions, they suffered losses of \$476 for the loss of a credit for an additional telephone lines, \$196 for the loss of long distance minutes, \$571.20 for cancellation fees, and \$672 for the value of lost terms in their previous contracts. they also claim \$1,000 in punitive damages. The applicants ask for an order that the respondents pay them a total of \$2,915.20.
20. The respondents all deny responsibility for the applicants' claimed losses. The respondents all say that they acted reasonably and in good faith when dealing with the applicants.

Should the CRT Refuse to Resolve any of the Applicants' Claims?

21. Under section 11(1)(a) of the CRTA, the CRT may refuse to resolve a claim if it would be more appropriate for (or already resolved through) another legally binding process or dispute resolution process. Further, section 11(1)(e) allows the CRT to refuse to resolve a claim if the claim is beyond the CRT's jurisdiction.
22. The applicants' claims involve cellular telephone contracts and allegations about the respondents' associated business practices. The federal *Telecommunications Act* applies to telecommunications service providers. Section 72(1) of the *Telecommunications Act* says that a person who has sustained loss or damage as a result of any act or omission that is contrary to the *Telecommunications Act* may sue for and recover an amount equal to the loss or damage from the person responsible in a court of competent jurisdiction. However, section 72(3) creates an exception, and says that nothing in section 72(1) applies to any action for breach of a contract to provide telecommunications services or any action for damages in relation to a rate charged by a Canadian carrier.
23. An Ontario court has interpreted this exception as being a "clear expression by Parliament that disputes involving contracts to provide telecommunications services should be resolved by the CRTC and not the courts" (see *B&W Entertainment Inc. v. Telus Communications Inc.* (2004), 134 ACWS (3d) 939 (Ont. Sup. Ct.), at paragraphs 16 to 17).
24. The Federal Court considered the scope of section 72(3) in *Wilson v. Telus Communications Inc.*, 2019 FC 276. In addition to claims about the breach of a contract, Mr. Wilson's action included claims about unfair business practices, false or misleading statements, and a lack of compliance with the CRTC's policies. The court agreed with the finding in *B&W* that Parliament's intention was that disputes involving telecommunications services contracts should be resolved by the CRTC (see paragraph 24). The court determined that it did not have the jurisdiction to hear the case.

25. In *Mekies v. Fido Solutions Inc.*, 2020 BCCRT 176, another tribunal member considered these interpretations of section 72(3). Although the CRT is not a court, the tribunal member determined that the same reasoning in *Wilson* applies, and found the CRT did not have the jurisdiction over claims about telecommunications services contracts. He refused to resolve the applicant's dispute.
26. Decisions from courts in other jurisdictions or other CRT members are not binding authority. However, I agree with the reasoning in *B&W*, *Wilson*, and *Mekies*, and find that the CRT does not have the jurisdiction to consider the applicants' claims about their telecommunications services contracts. Based on the decision in *Wilson*, I find that the lack of jurisdiction extends to the applicants' allegations about deceptive business practices and inaccurate information. Therefore, I refuse to resolve this dispute under section 11(1)(e) of the CRTA.
27. Even if the CRT did have jurisdiction over this type of claim, I would refuse to resolve the applicants' dispute under section 11(1)(a) of the CRTA. I find that the CCTS provides a more appropriate dispute resolution process and, based on the evidence before me, that the CCTS has addressed the substance of the applicants' claims already. Given this conclusion, I do not need to address the applicants' damages claims in any detail.
28. In the circumstances, I direct the CRT to refund the applicants' CRT fees.

ORDER

29. I refuse to resolve the applicants' dispute under sections 11(1)(e) and 11(1)(a) of the CRTA.

Lynn Scrivener, Tribunal Member