

SUPERIOR COURT OF JUSTICE  
SMALL CLAIMS COURT

B E T W E E N:

DRUMMOND, SUSAN G.

Plaintiff

v.

ROGERS WIRELESS INC.

Defendant

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R E A S O N S F O R J U D G M E N T

By MADAME JUSTICE P. THOMSON  
on February 22, 2007, at Toronto, Ontario

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- Thomson, J.

Thursday, February 22, 2007

R E A S O N S   F O R   J U D G M E N T

THOMSON, J. (Orally): The chronology of what happened here is a very important part of the story, which is why I have written it on the board there.

The plaintiff went in May of 2005 to Israel, her personal cell having been left at home. Shortly after she came back, she received a message from Rogers asking her to call them. That was the 26<sup>th</sup> of August. From Rogers' point of view, at that point, they knew that there was \$12,000 worth of telephone calls on an account that had never been near that high, and that this \$12,000 was above the threshold, such that it got flagged by the computer. Once flagged by the computer, it was checked over by a human being and Accounts Receivable was informed, hence the phone call on the 26<sup>th</sup>.

On the 27<sup>th</sup>, Accounts Receivable speaks to the plaintiff. She tells them that this must refer to a lost phone. She realizes at that point that she doesn't have the phone, wants to cancel. The plaintiff says she is not going to pay, obviously, because she takes the position

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that she didn't make the calls. She is referred to Customer Relations. Customer Relations and the plaintiff have several conversations on this day. The important thing, from my point of view, is that they are told that she lost the phone in May, that she's not responsible for the phone calls.

Rogers say she is responsible and the phone is blocked. They tell the plaintiff to go to the police, which advice the plaintiff follows. Mr. Gefen calls Customer Service shortly after at 1:00, and he is referred to the Fraud department/Loss Prevention. The Fraud department leaves a message at the home phone.

Customer Service again is in conversation with the plaintiff. The plaintiff's own correspondence in Exhibit 6 details the names and the numbers and the exact times of those conversations. For the purposes of my judgment, I am not going into detail.

Plaintiff, at this point, says they are not her telephone calls, she is not responsible. She is transferred to a manager at 1:39. At 2:34, management has had their debate with the plaintiff about the responsibility and the provisions of the contract, and matters are not resolved. And I'm not sure, but there's a phone call either from the plaintiff or from Mr. Gefen, still on the 27<sup>th</sup>, at 3:12, inquiring

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about unbilled charges on 5-7-8-0. This is the first time that 5-7-8-0 comes up.

On the 28<sup>th</sup>, Rogers' Fraud department investigates and comes to a conclusion that there is no fraud, as they define it, and the issue is closed. From their point of view, she owes the money. That's at 12:28 in the afternoon that they come to that conclusion and communicate it to the plaintiff. The plaintiff writes a letter to Fraud, not Customer Relations, and delivers it. That's Exhibit 9. Exhibit 9 talks about the theft of her cell phone.

At any rate, the idea of the phone being lost in May clearly was an error on the plaintiff's part that is corrected as soon as they realize that what happened in May was a 'lost and found' situation. There was nothing on the bill received in June about telephone calls to Pakistan. At that point, they realize that they must be talking about something that's happened in July. I can understand that kind of error being made. The plaintiff is a pretty excitable person, and her mind often runs much too quickly.

At any rate, that is corrected right away. On the 28<sup>th</sup>, Fraud makes its investigation, makes its decision that there's nothing that they're going to do. The plaintiff delivers her letter

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to Fraud, and the matter is sent back to Accounts Receivable.

The 28<sup>th</sup> of August is a Sunday. So, the defendants have moved over the weekend, the 26<sup>th</sup> being the Friday. Everyone has been moving quickly over the weekend and a lot has happened. The 29<sup>th</sup> is a Monday, and as far as my notes show, nothing happens. The 30<sup>th</sup>, anywhere in any of the exhibits I've looked, I find nothing.

On Wednesday the 31<sup>st</sup>, the matter is back in Accounts Receivable by this time. A text message is sent for the plaintiff to call, and some sort of special instructions are added to the account. We do not know what those special instructions were because they have been deleted. It appears that the special instructions put up on the 31<sup>st</sup> were the second set of special instructions, the first set being put up on the 26<sup>th</sup>. And again, we do not know what they were. But we do know that on the 27<sup>th</sup>, Ms. Drummond's phone is blocked.

So, on the 31<sup>st</sup>, a message is sent out and there's no reply. The 1<sup>st</sup> of September, which is the Thursday before the long weekend, I have no record of anything happening. On Friday the 2<sup>nd</sup>, 5-7-8-0 is blocked. Now, we know that it is Noah's phone. Rogers knows at that point, from the letter of the 28<sup>th</sup>, that the plaintiff is concerned about her second phone.

The first indication that is given to Rogers that the son is involved is orally, which as we will see as we go through this decision, doesn't mean much. It is not until the letter of the 3<sup>rd</sup> of September that there is written mention of Noah's phone and the need for her to be in communication with her son. The focus still, as of the 3<sup>rd</sup> and throughout the 2<sup>nd</sup>, the 3<sup>rd</sup> being the Saturday of a long weekend, is access to the plaintiff's phone.

That draft claim, which was not issued, again focuses on the absence of one phone. There is reference at paragraph 9 of that draft that, "I might find that in Noah's moment of urgencies, Rogers had suspended service, as Rogers, through its representatives, have now threatened to do repeatedly." That's the first indication the plaintiff makes about the use of the second phone. By that time, of course, it is too late. The phone has already been blocked. The plaintiff does not discover this until after the Labour Day weekend, which takes us to Tuesday the 6<sup>th</sup>.

On the 3<sup>rd</sup>, there are detailed notes in Exhibit 4 about Accounts Receivable and Customer Relations talking about the plaintiff's concerns. The plaintiff had called on the 2<sup>nd</sup>, a Saturday, about an invoice and a new phone, and I believe this is the day that she goes to

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the police. A police report was duly sought and duly filed, as could be expected.

I have a question mark as to when on Saturday the 9<sup>th</sup> the letter at Tab G was delivered. There are phone calls also set out in Exhibit 4.

During the Labour Day weekend, on Sunday the 4<sup>th</sup>, the plaintiff buys a new phone at a Rogers video store, gets her phone unblocked and calls Customer Service twice. The notes are in Exhibit 4. Nothing happens on Labour Day Monday. On the Tuesday, the plaintiff is not dealing by telephone but rather is in the stores dealing with customer service people in the stores, as shown in Exhibit 4. Various things are faxed to her, and so on.

They wouldn't know until the 6<sup>th</sup> about this, in terms of any true corporate knowledge, because the letter is delivered in the afternoon of the Saturday of a long weekend. It is five pages long, extremely detailed, and somewhat repetitive. By the time they receive that letter of September the 3<sup>rd</sup> and someone can act on it, Rogers has also received, on September the 5<sup>th</sup>, a letter that says, "Please be advised that the attached Form 7A, Plaintiff's Claim, has been sent by courier to Small Claims Court, Superior Court of Justice," so on and so forth. "Small Claims will give this claim a file number and a copy will be sent back to me. Once I

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receive the claim with the Small Claims Court file number, I will courier a copy of this Notice of Claim to the Legal department, as per the instructions in Article 34 of Rogers standard form contract." (No reference to the Rules of Court, which don't provide for service by courier. That's another issue.)

On the 7<sup>th</sup>, which is the Wednesday after the long weekend, Accounts Receivable is told by the Legal department to put a hold on any collections. That is the day that the plaintiff discovers Noah's phone is not working. She is assured by Rogers, I'm not sure whether it was personally or by the phone, that this has nothing to do with her dispute relating to her lost phone. She follows the advice that it has nothing to do with that, and goes the next day to have the phone fixed.

Well, it turns out it needs a new SIM card, and lo and behold, the store doesn't have the SIM card. She doesn't get a SIM card until the next day, that is the 9<sup>th</sup>. That is the day that she writes Ms. Tsetsakos at the Legal department, setting out in great detail the chronology of things up to that point and saying very clearly that it is on the 9<sup>th</sup> of September that she discovers that her son's phone is blocked and has been since the 2<sup>nd</sup>. Of course, Exhibit 4 and the correspondence, as well as the pleadings, show what goes on after that.

