

SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

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B E T W E E N:

DAVID RAMSAY

Plaintiff

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- and -

BCE INC.

Defendant

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

BEFORE DEPUTY JUDGE W.C. DE LUCIA
on March 19, 2018, at TORONTO, Ontario

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APPEARANCES:

David Ramsay

Plaintiff, In Person

S. Redding

Counsel for the Defendant

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**SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT**

T A B L E O F C O N T E N T S

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REASONS FOR JUDGMENT

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LEGEND

[sic] Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) Indicates preceding word has been spelled phonetically.

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Transcript Ordered:

March 20, 2018

Transcript Completed:

April 9, 2018

Ordering Party Notified:

April 9, 2018

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1.
Reasons for Judgment

MONDAY, MARCH 19, 2018

...COURT OPENS

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

5 DE LUCIA, DJ. (Orally):

This is in the matter of plaintiff David Ramsay and defendant BCE Inc. carrying on business as Bell Canada. Action number 178757. The trial was heard today, March 19th, and I intend to render my oral decision at this time.

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As to the position of the parties, the plaintiff Mr. Ramsay maintains that he has a verbal enforceable contract with the defendant Bell Canada regarding his purchase of two services, a Fibe 50 unlimited internet service and a Fibe TV service, for his Collingwood property and maintains that the essential terms that were agreed to with the defendant was for a total cost of \$112.90 per month plus applicable taxes and the term was for 24 months. And maintains - the plaintiff does that Bell has breached this contract and has failed to honour this contract and - which was a result of a Bell promotion and as a result he has suffered damages which he has described to be in the amount of \$340. Mr. Ramsay also claims costs and interest.

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Bell's position is that the plaintiff has received the services, has accepted the installation of the services and has made payments to Bell in the monthly installments as invoiced and including price increases and that the plaintiff has accepted the

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Reasons for Judgment

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terms of service and that the terms of service and the price increases are all captured into a legal enforceable contract and that Bell is entitled to make price changes and that this court has no jurisdiction over interfering with Bell's right to make price changes and price increases and that in fact the plaintiff did receive the services of the TV and internet services and that the baseline price of 112.90 per month was honoured subject to applicable price increases.

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The issue for this court's determination is whether in that conversation of November 30th, 2016, a telephone call initiated by the plaintiff to the Bell representative constitutes a legal enforceable oral contract for the TV service and the internet service in the amount of \$112.90 per month for a term of 24 months. And if the court finds that that agreement on that November 30th, 2016, telephone call is enforceable then what are the plaintiff's damages.

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After a careful and objective review of the evidence I make the following findings of fact. First of all I find that there was in fact this telephone call from Mr. Ramsay to Bell Canada on November 30th, 2016, and in particular he made inquiries regarding the telephone and internet services. That he was speaking to an authorized representative of Bell Canada. I accept Exhibit 1 to be a complete and accurate transcript of the telephone conversation of November 30th, 2016. I accept the exhibits

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Reasons for Judgment

5 introduced as invoices rendered by Bell Telephone to Mr. Ramsay setting out the prices and price increases from December of 2016 through 2017 and still ongoing. I accept that the plaintiff did accept the installation of the TV and internet services. I accept that the services were installed at the Collingwood property. I accept that Mr. Ramsay is making the payments and is not in default.

10 And I also find that the telephone transcript Exhibit I describes and demonstrates the essential elements of a contract and in particular the elements of offer, acceptance, consideration, intention to create legal relations and the consensus *ad idem*, meaning the meeting of the minds. I accept that there were no conditions in that November 30th, 2016, telephone call and ultimately the transcript and that the Bell documents, if there is any ambiguity, then any ambiguity of these documents, which I find to be the Bell documents, will be resolved in favour of the plaintiff.

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25 I find that Bell Canada cannot unilaterally insert or impose new terms. Any imposition of new terms without fresh consideration is unenforceable. I also find that that kind of contractual behaviour is high-handed, arbitrary and unacceptable. In particular, terms that speak to price increases, as I've stated, there is no fresh consideration for this price change mechanism and I find that to be
30 unenforceable.

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It is true that the court cannot interfere with Bell Canada's rights to impose price changes. That is its commercial right to do so but not during a contractual term, and the term here was for 24 months at \$112.90 per month for TV and internet services and therefore those terms are enforceable. To alter or to change the terms, as Bell has requested, would be grossly unfair, grossly prejudicial to the plaintiff and unconscionable.

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Contracts are designed to bring stability to transactions, and in particular a consumer transaction as such as we have here. Bell's attempt to unilaterally impose terms are unacceptable. I accept the plaintiff's position that Bell Canada attempted to clarify or to introduce or to bring to the attention of the consumer new terms of the contract through subsequent emails. None of those terms were introduced or brought into the parameters of the transcript of November 30th, 2016. And accordingly, this is not how contract law works and the relevant, as I say, the relevant elements of the contract are found in the transcript of November 30th, 2016.

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So I'm also satisfied that the plaintiff has proved his case on a balance of probabilities which is the onus that he must discharge in a civil case and he has discharged that onus. And with the findings that I've made I find that the defendant is liable to the plaintiff, that the defendant has breached the terms of the contract by introducing and

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Reasons for Judgment

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imposing price changes via its invoices and I find that the terms of condition do not alter the original contract which is in effect and accordingly I award damages to the plaintiff in the amount of \$340.

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The plaintiff did not claim in his plaintiff's claim a pre-judgment interest amount or a rate and accordingly there'll be no pre-judgment interest but I will award post-judgment interest in accordance with the *Courts of Justice Act*. And that leaves now cost to be determined for Mr. Ramsay, and being self-represented there are no legal representation costs but you're entitled to cost to a maximum of \$500 under Rule 19 for the inconvenience and expense that you have incurred. What is your position as to costs and your disbursements?

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DAVID RAMSAY: What is my position as to costs and disbursements?

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THE COURT: Yes.

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DAVID RAMSAY: So is this my time, Your Honour, to point out any additional costs I've had. So, so I had to pay \$95 to submit my initial claim online. I had to pay \$100 for this trial and then the gas and parking coming here twice.

THE COURT: Sorry, it was 95 to issue the claim?

DAVID RAMSAY: Ninety-five online, yeah.

THE COURT: Okay. And then to set it down it was not 145?

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DAVID RAMSAY: Actually it was that, yeah. It was 145.

THE COURT: That's the new rate.

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DAVID RAMSAY: Right. And then there was gas and parking which is approximately - and I had to come twice, so approximately \$40 each time. So there's 80 for that and then my lunch today cost \$10.

THE COURT: So you attended the court twice and paid parking twice?

DAVID RAMSAY: Yes, and gas.

THE COURT: Fifteen dollars each.

DAVID RAMSAY: Yes.

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THE COURT: The Rule 19 also allows for preparation of the claim up to a maximum of \$100 and I will allow that amount as well plus parking of \$30. So that's \$270 in disbursements and I will ask Ms. Redding for her position. Is there anything else, sir?

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DAVID RAMSAY: That, that's it.

THE COURT: Okay. So, Ms. Redding, in terms of the cost to Mr. Ramsay for inconvenience expense and his out of pockets.

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MS. REDDING: We accept the amount for the disbursements, Your Honour. With regard to - and also with regard to the preparation of \$100. We did file an offer to settle but it is one day late so I can't use it for any consideration on costs.

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THE COURT: All right. Okay. And I'm prepared to state that costs are within the court's discretion. Costs normally follow the success and there's no reason for me to deviate from that rule and I will award Mr. Ramsay costs of \$500 which is the maximum under Rule 19 for inconvenience and expense and disbursements as itemized by Mr. Ramsay and accepted
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by the court for a total of \$270 being the 95 to

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issue the claim, 145 to set it down, \$100 for preparation of claim and \$30 for parking. Total \$270. So cost award all inclusive of \$770. Damages of \$340 and post-judgment interest on the award in accordance with the *Courts of Justice Act*. I'll write up the endorsement. You'll get a copy from the registrar in a moment and then you'll be free to go. I'll read the endorsement into the record. On hearing the evidence, submissions and for oral reasons given on the record, it is ordered, number one, judgment for the plaintiff against the defendant in the amount of \$340. Number two, post-judgment interest as per the *Courts of Justice Act* and, three, costs payable to the plaintiff in the all inclusive sum of \$770. Endorsement here is on top of the file, Madam Registrar. Copies for the parties.

...WHEREUPON THESE PROCEEDINGS WERE CONCLUDED

8.
Certification

FORM 2
Certificate of Transcript
Evidence Act, Subsection 5(2)

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I, ADRIENNE MIGNARDI, certify that this document is a true and
accurate transcript of the recording of DAVID RAMSAY v. BCE
INC. in the Superior Court of Justice held at, 47 Sheppard
Avenue East, TORONTO, Ontario, taken from Recording(s) No.
10 4816_300_20180319_094526__2_SCC.dcr, which has been certified
in Form 1.

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Date

(Authorized Signature)

Adrienne Mignardi

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