

CANADA / JUDGMENT

One Touch Wireless Ltd. v. Bell Mobility Inc.

2019 BCSC 813

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Supreme Court of British Columbia

DECIDED

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2019 BCSC 813 One Touch Wireless Ltd. v. Bell Mobility Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

One Touch Wireless Ltd. v. Bell Mobility Inc.,

2019 BCSC 813

Date: 20190418

Docket: S182815

Registry: Vancouver

Between:

One Touch Wireless Ltd. and Saqib Riaz

Plaintiffs

And:

Bell Mobility Inc. and Virgin Mobility Canada, a division of Bell Mobility Inc.

Defendants

Before: The Honourable Madam Justice Adair

Oral Reasons for Judgment

In Chambers

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Place and Date of Hearing:

Vancouver, B.C.

April 4, 2019

Place and Date of Judgment:

Vancouver, B.C.

April 18, 2019

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1. Introduction

[1] The plaintiffs and the defendants (collectively, "Bell") are parties to detailed dealer agreements (the "Dealer Agreements") pursuant to which One Touch has operated five "Bell" branded retail stores and five "Virgin Mobile" branded retail stores located on the North Shore and in Surrey. The stores offer a range of Bell products and services. The relationship between One Touch and Bell began over 10 years ago and is nonexclusive. The plaintiff Mr. Riaz is the sole director, officer and shareholder of One Touch and manages all of the stores.

[2] On March 1, 2019, Bell issued a "notice of default" to the plaintiffs, asserting that the plaintiffs had engaged in serious misconduct in breach of their obligations pursuant to the Dealer Agreements. On March 18, 2019, at 4:02 p.m., a notice of termination, terminating all of the Dealer Agreements, was issued by Bell to the plaintiffs. The notice of termination was stated to be effective (pursuant to the terms of the Dealer Agreements) at 12:01 a.m. on March 19, 2019.

- [3] On March 19, 2019, and on the plaintiffs' application, an injunction was pronounced by Mayer J. The injunction by its terms was until April 2, 2019. The hearing before me was what is sometimes described as the "comeback" hearing, when, following service and exchange of materials, the issue of whether any injunction should be granted, and, if so, on what terms, is argued in full on the merits. At the conclusion of the hearing on April 4, I extended the injunction until Noon today.
- [4] The plaintiffs seek an interim and interlocutory injunction enjoining and restraining Bell, by themselves or by their agents, employees or otherwise, from cancelling, terminating or purporting to cancel or terminate the Dealer Agreements until trial or other disposition of this action or further court order.
- [5] The plaintiffs say that, as justification for the notice of termination, Bell has made serious allegations of fraud against them. The plaintiffs say that these accusations are false and unsupportable. They say that the purported termination is unjustified under the Dealer Agreements, appears to be the result of singling out One Touch for punitive action, and is a breach of a franchisor's duty of fairness. They say that these matters raise serious questions to be tried. The plaintiffs say further that termination of the Dealer Agreements will cause them irreparable harm - including the destruction of One Touch's business and Mr. Riaz's livelihood - and that both the balance of convenience and the interests of justice favour granting the injunction in the terms requested.
- [6] Bell says that the application must be dismissed. Bell says that even if the plaintiffs have raised a serious issue to be tried, One Touch will not suffer irreparable harm if the injunction is refused, and the balance of convenience favours Bell.
- [7] For the reasons that follow, I have concluded that the plaintiffs' application must be dismissed.

2. Background

- [8] I will begin with an outline of the background facts to the extent they are relevant to this application. I am not charged with making any final determination concerning the merits of the issues between the parties. Accordingly, I am not making any final findings of fact.
- [9] One unusual feature of the application is that, because events developed very rapidly in mid-March, the existing notice of civil claim does not reflect the claim that the plaintiffs intend to advance based on those events. The application record before me included a proposed draft amended notice of civil claim. However, as of the date of the hearing before me, counsel for the plaintiffs had not yet been able to prepare and file a notice of application to amend the notice of civil claim.

- [10] The relationship between One Touch and Bell goes back to 2007, when One Touch opened its first retail location. In 2009, One Touch opened a second location in Delta, B.C. Both were funded by personal investments made by Mr. Riaz. In 2009, One Touch was invited to bid on the takeover of a Bell corporate store location in Panorama Ridge, which One Touch says was sold to it for \$1.00. In 2010, all One Touch stores were converted to Bell-branded stores (as opposed to being marketed under the "One Touch" brand).
- [11] The plaintiffs say that the way in which they are now being characterized by Bell is in stark contrast to how they were regarded by Bell in the past. The plaintiffs say that, for example, in 2014, 2015 and 2016, One Touch received an award as the best Bell dealer in Western Canada.
- [12] Dealerships such as One Touch are not owned and operated by Bell. However, from a consumer's perspective, the dealerships share the same look and feel as Bell's corporately owned retailers. Thus, from a customer's perspective, the dealership stores and the Bell-owned stores are indistinguishable. They are both "Bell stores."
- [13] According to Bell, between 2010 and 2012, it sought aggressively to expand its market share in Western Canada, which, up to 2010, had been relatively modest. According to Bell, and to that end, it opened 60 corporate and dealer-owned Bell stores in Western Canada, including B.C. According to Bell, one of its key goals in converting dealer-owned stores to Bell-branded stores was that, from a consumer's perspective, the retail experience would be essentially identical in look, feel and experience at any Bell-branded store across Canada. Bell says that it put its brand, goodwill and reputation squarely behind dealers (such as One Touch) and their stores. According to Bell, during this period, and as part of this strategy, a number of authorized dealers were converted into Bell-branded stores. Bell says that it generally contributed 50% to 60% of the build-out costs for these conversions and, the dealer was also expected to fund a portion of the conversion expenses. According to Bell, One Touch was one of many authorized dealers that Bell approached who was willing to convert its stores to Bell-branded stores.
- [14] As I noted above, as of 2018, One Touch operated at total of 10 stores. Each was subject to a separate Dealer Agreement. However, the terms of the Dealer Agreements were substantially similar and I will use the Dealer Agreement between the plaintiffs and Bell for the Sunshine Village (Surrey) location as an example. It provides in relevant part [bold in original]:

1.1 Definitions

...

(jj) "Event of Default" means a breach of any covenant, term or condition of this Agreement or a failure to comply with any term or provision of the Operations Updates or any other written agreement between Bell Mobility and the Dealer, including an Other Dealer Location Agreement;

...

(ddd) "Month-to-Month Term" has the meaning ascribed thereto in Section 3.2;

...

(mmm) "Other Dealer Location" means another location or premises where the Dealer, its Affiliate or the Principal is operating a business using the Bell Mobility System;

...

(kkkk) "Term" means the Term as described in Section 3.2, and includes the Initial Term and, if the Dealer's right to operate the Business is extended in accordance with Section 3.2, also includes any Month-to-Month Term;

...

1.2 Calculation of Time

For the purposes of this Agreement, a day shall be deemed to begin at 12:00:00 a.m. (Eastern Standard Time) and to end immediately after 11:59:59 p.m. (Eastern Standard Time).

...

2.1 Objectives

The intentions of the parties in entering into this Agreement are:

- (i) to provide for the efficient, exemplary and ethical operation of the Business to ensure the highest level of service to all customers and potential customers;
- (ii) to provide for consistent improvement in the levels of service offered to customers and potential customers;
- (iii) to increase the number of Subscriptions to Services that are provided by any Bell Company or any Affiliates thereof and to increase the sale of Products associated with such Services;
- (iv) to improve productivity from Business operations by increasing efficiency; and
- (v) to preserve and enhance the reputation of each Bell Company and its Affiliates, including Bell Mobility, and to increase the goodwill associated with the Marks.

...

3.2 Term and Renewal

The term of this Agreement shall be for a period commencing on the Commencement Date and, unless terminated earlier pursuant to the terms hereof, will continue until April 30, 2021 (the "Initial Term"). If the parties have not executed a new dealer agreement by the expiry of the Initial Term and Bell Mobility continues to accept Subscriptions through Dealer, the terms of this Agreement shall renew for successive monthly terms (each a "Month-to-Month Term"), which Month-to-Month Terms can be terminated by either party upon a minimum of sixty (60) days

prior written notice to the other. The term of this Agreement (the "Term") includes the Initial Term and any Month-to-Month Term. . . .

. . .

3.8 Employees

Dealer is solely responsible for the employment, remuneration, and training of all its employees, agents, contractors, and representatives required for the operation of the Business (the "Staff") . . .

. . .

10.2 Integrity and Ethical Conduct

Dealer shall operate the Business pursuant to this Agreement with due diligence, in a timely and reputable manner. Dealer shall adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct in respect of the relationship contemplated herein and Dealer's operation of the Business so as to protect and reflect favourably on the reputation of Dealer, other authorized dealers, Bell Mobility, its Affiliates, and Bell Companies and the Marks.

. . .

12.4 Inspection

Upon the occurrence of an Event of Default which has not been remedied, Dealer shall:

- (i) provide, at its sole expense, such reports, records and financial information in sufficient detail, as may be prescribed by Bell Mobility;
- (ii) execute and deliver such directions and other documents as Bell Mobility may require to release or disclose any pertinent information and documents; and
- (iii) permit Bell Mobility or its authorized agents, without prior notice, to inspect, audit or take inventory of the financial books, records or other materials (including purchase orders) in respect of the Business and/or the Premises.

. . .

12.5 Secret Shopper Program

Without prejudice to any other rights of Bell Mobility or Dealer under this Agreement, Bell Mobility shall have the right, either itself or through an authorized agent qualified for such purpose, to carry out clandestine inspections of the Business, without notice to Dealer, wherein the individuals carrying out such inspections ("Secret Shoppers") do not identify themselves as employees or agents of Bell Mobility but instead act to convey the impression that they are ordinary customers. Bell Mobility may use Secret Shoppers to inspect and evaluate any aspect of the operation of the Business, including . . . Staff ethics, pricing and representations relating to Products and Services, . . . Dealer acknowledges that the Secret Shoppers may use deceit and

misrepresentation to carry out their functions.

...

18.1 Principal(s)' Covenants

... In consideration of Bell Mobility entering into this Agreement with Dealer . . . , the Principal(s) hereby . . . unconditionally, irrevocably and indivisibly guarantees, solidarily with Dealer and in favor of Bell Mobility, Dealer's performance and fulfillment of all of Dealer's non-monetary obligations pursuant to this Agreement. In addition, the Principal(s) agree(s) to be personally bound by each of the terms, obligations and covenants contained in Section 10.2 (Integrity and Ethical Conduct) . . . as if the Principal(s) were substituted for Dealer named therein.

18.2 Participation of Principal in Business

A Principal or a fully qualified trained and designated manager employee of Dealer shall devote his or her full time, attention and efforts to the Business and may not participate in any other business or employment without Bell Mobility's prior written consent. . . .

...

19.1 Termination

Bell Mobility shall have the right to terminate this Agreement and the rights granted hereunder, without prejudice to the enforcement of any other right or remedy of Bell Mobility, immediately upon giving written notice to Dealer (or upon a future date specified in such notice), if any of the following occurs:

...

(ii) Dealer commits, participates or acquiesces in any fraudulent, illegal or otherwise improper conduct in relation to this Agreement or any Other Dealer Location Agreement or any conduct which is harmful to or reflects negatively upon Bell Mobility, the Bell Mobility System, the Marks or any Affiliate of Bell Mobility;

...

(iv) Dealer has committed three (3) Events of Default within any twelve (12) month period, whether such Events of Default are cured or not, and whether or not related to one another;

...

[15] The very detailed terms of the Dealer Agreements are, at least in part, a reflection of the fact that Bell (and its competitors) operate in a highly regulated industry overseen by the CRTC. In 2013, the CRTC established the "Wireless Code," a mandatory code of conduct for providers of retail mobile, wireless, voice and data services that established standards for industry behaviour, and that enables individual and small business consumers to obtain information about their contracts with wireless service providers and about their associated

rights and responsibilities. A failure to comply with the Wireless Code can result in regulatory action and sanction. Bell asserts that it takes its regulatory obligations very seriously.

- [16] Bell asserts that the initial term of three of the Dealer Agreements (for locations at King George Boulevard, 18640 Fraser Highway, and 16016 Fraser Highway, all Surrey) have expired and are now month-to-month, terminable (by either side) on 60 days' notice. Two Dealer Agreements (Capilano Mall and Park Royal South) have initial terms expiring August 29, 2019. The five remaining Dealer Agreements have initial terms expiring April 30, 2021.
- [17] This action was filed in February 2018. At that time, the plaintiffs alleged that Bell improperly held commissions payable to One Touch under the Dealer Agreements. In Bell's response to civil claim, Bell asserted that about \$488,000 in commissions were properly withheld because of what Bell asserted were breaches of the Dealer Agreements. A 10-day trial was set for August 19, 2019.
- [18] In November 2018, the parties reached a settlement whereby Bell agreed to pay an amount to One Touch on account of the commissions withheld. The settlement documents were duly executed and, at the beginning of 2019, counsel for the parties exchanged communications concerning payment of the settlement amount by Bell. However, the settlement amount has never been paid.
- [19] Bell asserts that, based on a strictly confidential investigation begun in December 2018 by its corporate security department, Bell concluded in February 2019 that One Touch had engaged in what Bell describes as "rampant misconduct" in its dealings with Bell and Bell customers, contrary to express terms of the Dealer Agreements. Bell then issued the notice of default on March 1, 2019, and implemented certain loss prevention measures that Bell says were designed to curtail the misconduct. However, Bell asserts that, despite the loss prevention measures, the misconduct persisted and left it no alternative but to terminate all of the Dealer Agreements, which it did on March 18, 2019.
- [20] When the notice of default was delivered on March 1, 2019, the plaintiffs objected very strongly. They did not condone in any way misconduct such as was described, but disputed whether Bell's conclusions concerning One Touch and One Touch employees were correct. According to the plaintiffs, they sought more details and specific instances of the misconduct alleged and questioned the basis on which Bell was asserting misconduct on the part of One Touch. Mr. Riaz was in contact with Mr. Steve Funk, Bell's regional sales manager, concerning the matters described in the notice of default, in particular the complaint concerning improper small business account activations. According to Mr. Riaz, when he raised the matter with Mr. Funk, Mr. Funk indicated that he was inclined to agree that "this looks to be punitive against One Touch." Although the plaintiffs questioned Bell's assertions in the notice of default, according to Mr. Riaz, he immediately took steps to secure compliance by One Touch and its employees with the loss prevention program.

- [21] On March 11 and 12, 2019, Mr. Riaz and Mr. Funk exchanged text messages concerning Mr. Riaz's plans to be out of town. Mr. Riaz advised that he would be away from March 12, 2019 to March 28, 2019. The text messages indicated that Mr. Marc Leclerc, the director, Western Canada Dealer Channel for Bell, might be calling Mr. Riaz. According to the text messages, when Mr. Riaz inquired why Mr. Leclerc needed to call him, Mr. Funk advised that he did not know, but that Mr. Leclerc had also said the matter could wait until Mr. Riaz returned. Mr. Riaz left for Pakistan on March 12, 2019.
- [22] I note that Mr. Leclerc has sworn three affidavits in response to the plaintiffs' application.
- [23] On March 15, 2019, counsel for the plaintiffs wrote to counsel for Bell demanding particulars of the misconduct referred to in the notice of default. No response was received.
- [24] As I noted above, the notice of termination was delivered March 18, 2019, effective March 19, 2019.
- [25] On March 19, 2019, the plaintiffs applied for an interim injunction. The application came on for hearing before Mayer J., who granted an order expiring the earlier of April 2, 2019 or further court order, set a schedule for delivery and exchange of materials and set a hearing date of April 1, 2019, unless otherwise agreed between the parties. As I noted at the outset of these reasons, the injunction has been extended from time to time, and until Noon today.

3 Discussion and Analysis

- [26] I note first that the hearing before me is a hearing de novo in which the plaintiffs have the burden to establish that an injunction in the terms requested is justified: see *MacLachlan v. Nadeau*, 2016 BCSC 1599, at para. 21.
- [27] There is no serious disagreement concerning the legal test that applies.
- [28] For the plaintiffs to succeed on their application they must show that: (a) there is a serious question to be tried; (b) they will suffer irreparable harm if the injunction is refused; and (c) the balance of convenience lies with the plaintiffs. This is the test set out in *RJR-MacDonald Inc. v. Attorney General of Canada*, [1994] 1 S.C.R. 311.
- [29] Although the test in *RJR-MacDonald* has three elements, injunctions are equitable remedies and the fundamental question in each case is whether the granting of the injunction is just and equitable in all the circumstances of the case: see *British Columbia (Attorney General) v. Wale*, 1986 CanLII 171, 9 B.C.L.R. (2d) 333 (C.A.).
- [30] *Wale* is also often cited in B.C. for the existence of a two-pronged test, with irreparable harm being considered as part of the balance of convenience.
- [31] In *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395, Saunders J.A. discussed the three-part and two-part tests, at paras. 92-95:

- [92] The distinction between the two formulations is the role played by irreparable harm in the availability of the remedy: is it a free standing requirement for an injunction or is it one feature, albeit highly influential, to be considered in the balance?
- [93] Most often the distinction is likely without practical effect, as I observed in *Coburn v. Nagra*, 2001 BCCA 607 . . .
- [94] Although written before *RJR MacDonald*, Mr. Justice Lambert discussed the two-part approach in *Canadian Broadcasting Corporation v. CKPG Television Ltd.* (1992), 1992 CanLII 560 (BC CA), 64 B.C.L.R. (2d) 96 (C.A.) ("CBC"), referring to *Wale and Manitoba (A.G.) v. Metropolitan Stores Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110: . . .
- [95] Respectfully, and recognizing that *RJR MacDonald* did not disapprove *Wale*, I would adopt the approach of *CBC*, recognizing that irreparable harm is an important factor to be considered in balancing the interests of justice, but its absence does not preclude an injunction where such is considered appropriate by a judge exercising the inherent jurisdiction assigned by the Law and Equity Act, R.S.B.C. 1996, c. 253.
- [32] In my view, whether the three-part test described in *RJR-MacDonald* or the two-part test described in *Wale* is applied here, the result is the same. The distinction is one without practical effect.
- [33] The burden with respect to the first requirement - is there a serious question to be tried - is relatively low. The applicant must simply satisfy the court that the claim is not frivolous or vexatious. At this stage, the court should not embark on a prolonged or extensive examination of the merits: see *Vancouver Aquarium*, at paras. 39-40.
- [34] The plaintiffs say that they have raised serious issues to be tried including:
- (a) whether Bell validly terminated each of the Dealer Agreements on grounds that One Touch committed, participated or acquiesced in any fraudulent, illegal or otherwise improper conduct or any conduct which is harmful to or reflects negatively on Bell, including the legal question of when fraud of an employee can be imputed to the employer; and
 - (b) whether or not Bell breached its duty of good faith to a franchisee or, in the alternative, its duty of good faith performance, by denying One Touch any opportunity to know the specifics of the alleged wrongdoing by its employees or the opportunity to try and remedy them before terminating the Dealer Agreements.
- [35] Initially (in its application response and written argument), Bell's position was that there was no serious issue to be tried because, based on the affidavits it filed in response to the plaintiffs' application, it had "proven" One Touch's misconduct and it had the right under the Dealer Agreements to terminate based on such misconduct. However, the plaintiffs objected to the admissibility of much of the evidence on which Bell relied as "proof." The grounds included: disguised hearsay; double hearsay; conclusions based on facts not in evidence; and inadmissible argument. I shared many of the plaintiffs' concerns.

[36] In the face of these objections, and as the submissions developed at the hearing, Bell (at least implicitly) modified its position with respect to whether the first element of the test had been met, and acknowledged that whether or not Bell's termination of the Dealer Agreements was wrongful was an issue for trial.

[37] In my view, the plaintiffs have raised a serious issue to be tried, which I would describe in a general way as to whether Bell's termination of the Dealer Agreements was wrongful. The first requirement is satisfied.

[38] I turn, then, to irreparable harm and the balance of convenience.

[39] The court in *RJR-MacDonald*, at p. 341, described the nature of irreparable harm and provided some examples:

"Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision [citation omitted]; where one party will suffer permanent market loss or irrevocable damage to its business reputation [citation omitted] The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration [citation omitted].

[40] Assessing the balance of convenience involves consideration of which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits: see *RJR-MacDonald*, at p. 342.

[41] The factors to be considered in assessing the balance of convenience include:

- (a) the adequacy of damages for the applicant if the injunction is not granted, and for the respondent if it is granted;
- (b) the likelihood that, if damages are awarded, they will be paid;
- (c) the preservation of contested property;
- (d) which of the parties has acted to alter the balance of their relationship and so affect the status quo;
- (e) the strength of the applicant's case;
- (f) any factors affecting the public interest; and
- (g) any other factors affecting the balance of convenience.

See *Canadian Broadcasting Corporation v. CKPG Television Ltd.* (1992), 64 B.C.L.R. (2d) 96 (C.A.), at p. 102.

[42] With respect to the evidentiary burden, as Bennett J.A. noted in *Vancouver Aquarium*, at para. 60:

[T]here surely must be a foundation, beyond mere speculation, that irreparable harm will result. Interlocutory injunctive relief pending the trial of the issues is a significant remedy, and should be invoked only when the test in *RJR-MacDonald* is satisfied on a sound evidentiary foundation.

[43] The plaintiffs say that if the Dealer Agreements are terminated, they will no longer be able to operate One Touch stores as Bell dealerships. They say that the sole business of One Touch is the operation of those stores, and termination of the Dealer Agreements would put an end to the plaintiffs' business immediately. The plaintiffs say that the expected consequences resulting from the termination of the Dealer Agreements would include: loss of future profits; liabilities to 21 employees arising from the termination of their employment; liability under the remaining terms of the store leases; and restrictions on Mr. Riaz's future employment. The plaintiffs say that these losses are not quantifiable.

[44] Therefore, the plaintiffs say, they will suffer irreparable harm if the injunction is not granted.

[45] The plaintiffs say that, on the other hand, if the Dealer Agreements are not terminated, Bell will be able to identify any losses suffered as a result and will be in a position to quantify and recover any such losses from the plaintiffs.

[46] The plaintiffs say further that they seek an injunction to preserve the status quo - that is, the operation of the One Touch stores under the Dealer Agreements - and in order to preserve One Touch's business pending trial. They say (citing *Wale*, at para. 52) that where the only effect of an injunction is to postpone the date on which a party (such as Bell) is able to embark on a course of action not previously open to it, injunctive relief will be ordered to preserve the status quo.

[47] On the other hand, Bell says that the plaintiffs have failed to satisfy their evidentiary burden with respect to irreparable harm. Bell points out that, for example, the plaintiffs have tendered no evidence concerning the financial affairs of either One Touch or Mr. Riaz. The absence of such evidence is also relevant to the question of whether the undertaking the plaintiffs have given with respect to damages has any value. Bell says that, on the evidence, there is no reason to believe that either of the plaintiffs could satisfy an undertaking to pay damages to Bell. Bell says that, on the other hand, any damages the plaintiffs might suffer as a result of the injunction being refused can be determined and there is no doubt that such damages could be paid by Bell. Bell points out that, under the Dealer Agreements, One Touch can have no reasonable expectation of being able to operate any of the One Touch stores in perpetuity. Indeed, with respect to three of the stores where the initial term has expired, Bell says it has the right now under those Dealer Agreements to terminate the agreements on 60 days' notice. The terms of two other stores expire in August 2019. The terms of the five remaining stores expire in April 2021.

- [48] With respect to employees of One Touch, Bell points out that it has stated an intention to continue to employ employees who have not engaged in wrongful conduct. This is consistent with Mr. Riaz's own approach, since he does not condone the type of misconduct Bell says it has identified. Rather, he has stated that he "would never tolerate any One Touch employee suggesting that customers improperly activate small business accounts," and that One Touch would terminate all employees engaging in wrongful conduct.
- [49] More generally, Bell says that the balance of convenience favours refusing the injunction.
- [50] Bell says that it will suffer irreparable harm if it is required to continue its relationship with One Touch, which would require Bell to continue to hold out One Touch as its authorized agent, despite what Bell believes is serious misconduct, which continued after the loss prevention measures were put in place. Bell says that damages are not an adequate remedy for the ongoing and worsening degradation of Bell's brand among the public, its customers and its other dealers. Bell says that, if the injunction is refused, Bell will also risk damage to its relationship with its other dealers, as all dealers are expected to abide by the terms of their agreements and earn commissions on legitimate sales. Bell says that maintaining loss prevention measures with respect to One Touch pending trial is not sustainable or practical. These measures involve a significant amount of time and resources to operate and they affect customer service, potentially affecting sales. Bell says that loss prevention measures inappropriately place the burden of policing employee conduct and misconduct on Bell, when it belongs on the plaintiffs.
- [51] Bell says that refusing the injunction does not necessarily mean that the underlying stores will cease to operate. For example, according to Bell, it already has the right to assume the leases of two of One Touch's stores immediately. Thus, the prospect of the plaintiffs having continued liability for leases if the Dealer Agreements are terminated appears doubtful.
- [52] I am not persuaded that the plaintiffs would, in the circumstances, suffer irreparable harm if the injunction is refused. Damages from loss of a business can be quantified. In my view, the plaintiffs can be adequately compensated by an award of damages, and Bell is in a position to pay any reasonable amount of damages to which the plaintiffs might be entitled arising from the asserted wrongful termination of the Dealer Agreements. Bell's losses - for example, damage to its goodwill and to the integrity of its relationships with its other dealers - are harder to quantify. Moreover, there is very little in the evidence that supports the conclusion that the plaintiffs' undertaking as to damages has sound financial backup.
- [53] Based on these considerations, the balance of convenience favours Bell, not the plaintiffs.
- [54] There are additional factors that, in my view, tip the balance of convenience in favour of Bell.
- [55] The threat to One Touch employees who have not engaged in misconduct is doubtful, as Bell has stated it is prepared to offer them employment.

- [56] The Dealer Agreements did not give the plaintiffs any exclusive rights. Rather, One Touch was one of many Bell dealers in Metro Vancouver. Those facts make this case distinguishable from the facts in 674834 Ontario Limited v. Culligan of Canada Ltd. and others, 2007 CanLII 8014 (ONSC), relied on by the plaintiffs, which involved what the court described as a "defacto exclusive" distributorship.
- [57] The plaintiffs also rely on Golden Globe Pizza Inc. v. Domino's Pizza of Canada Ltd., 2015 BCSC 356, where an interim injunction was granted to prevent termination of a franchise agreement. The plaintiffs were in the fourth year of an agreement that had a term of 10 years and gave the plaintiff an option to renew for a further 10 years provided it had not been in default of any material provisions in the agreement. The facts that the remaining term was six years, with the possibility of renewal for a further 10 years, and that, if the injunction was refused, an assessment of damages would require the court to make findings about income and profit that would likely have been generated over 16 future years, were significant factors in the court's conclusion that the balance of convenience weighed in favour of granting the injunction.
- [58] Again, the facts here are distinguishable. Here, there is a longer track record of operations. Moreover, as noted above, by their terms, three of the Dealer Agreements can be terminated now on 60 days' notice. Others are nearing the end of the terms (three in August of this year and five in April 2021).

4. Disposition

- [59] Accordingly and for those reasons, the plaintiffs' application is dismissed. The injunction that has been in place is dissolved as of Noon today.
- [60] I consider the appropriate order with respect to costs is that costs should be in the cause, and I so order.
- [61] That concludes my reasons.

"ADAIR J."

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