
CANADA / JUDGMENT

Stolba v. Comwave

2017 BCSC 2254

COURT

Supreme Court of British Columbia

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2017 BCSC 2254 Stolba v. Comwave

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stolba v. Comwave,

2017 BCSC 2254

Date: 20171208

Docket: S141838

Registry: Vancouver

Between:

Lucas Stolba a.k.a Ljubisa Stolba

Plaintiff

And

Comwave

Defendant

Before: The Honourable Madam Justice Iyer

Reasons for Judgment

The Plaintiff on his own Behalf:

L. Stolba

Counsel for the Defendant:

M. Funt

Place and Date of Trial:

Vancouver, B.C.

October 10 to 13, 2017

Place and Date of Judgment:

Vancouver, B.C.

December 8, 2017

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OVERVIEW

[1] This case concerns the contractual relationship between Lucas Stolba, a call centre owner and operator, and Comwave Networks Inc. ("Comwave"), a telecommunications company. Mr. Stolba operated call centres in Vancouver and elsewhere in the world selling

telecommunications products such as dial-up long distance and home telephone services through telemarketing. Over the decade starting in the early 2000s, the Canadian telecommunications industry was changing, both through deregulation and through technological innovation, which saw the rise of voice over internet telecommunications options such as Skype and WhatsApp competing with more traditional technologies.

- [2] Mr. Stolba sold telecommunications products under agency agreements with telecommunications companies. The compensation earned by the agent under such agreements often consists of two components: first, an initial payment made when a customer purchased a telecommunications product ("commission") and a percentage of the money earned by the telecommunications company when the customer paid his or her monthly bill ("residual").
- [3] Starting in May 2008, Mr. Stolba's call centres sold telecommunications products under an agency agreement with Call Select Inc. ("Call Select Contract"). In the fall of 2010, Call Select Inc. or its assets were acquired by Comwave, and at the end of September 2010, Mr. Stolba commenced selling Comwave's telecommunications products under an agency agreement with Comwave ("Comwave Contract").
- [4] The revenue from Mr. Stolba's call centres, which had previously been very profitable, declined during the years he operated under the Comwave Contract. Although he invested significant time and money in his call centres, his sales were lower and he was operating at a loss. In late 2011, Comwave notified Mr. Stolba that he was not meeting the sales quotas required under the Comwave Contract, which was a ground for termination under that contract. However, the agency relationship continued until March 20, 2013, when Comwave terminated all of its agency agreements with agents providing telemarketing services, including with Mr. Stolba, and ceased to sell any of its telecommunications products through telemarketing.
- [5] Mr. Stolba advances a number of claims against Comwave, some of which rely on the Comwave Contract and some of which do not. With respect to the latter, Mr. Stolba argues first, that the governing contract is not the Comwave Contract but the Call Select Contract on the basis that Comwave did not buy the assets of Call Select, it bought the company as a going concern. Second, he says that the Comwave Contract is unenforceable because he was coerced to sign it.
- [6] Mr. Stolba also argues that Comwave breached the Comwave Contract by taking actions detrimental to him that were not contractually authorized or contrary to their agreement. Specifically, he alleges that Comwave paid amounts owing to him later than the date stipulated by the Comwave Contract, it imposed unauthorized chargebacks on commissions, deductions for suspensions, verification and/or validation charges, and a deduction relating to a cancellation fee, it changed the commission structure, failed to pay him the required amounts for residuals, and did not pay him his earnings for the month of March 2013. Mr. Stolba also alleges that Comwave failed to comply with the termination provisions of the

Comwave Contract when it terminated the contract and directed him to stop sales.

- [7] Mr. Stolba also claims that Comwave was unjustly enriched because it unlawfully deducted from Mr. Stolba's compensation the amount of a loan that Mr. Stolba had taken out with Call Select.
- [8] Mr. Stolba calculated his losses on all of these grounds as totalling \$4,579,475.00. He seeks damages in this amount, and also punitive damages in the amount of \$100,000 for what he characterizes as Comwave's reprehensible conduct, as well as interest and costs.
- [9] In its response to civil claim and in its opening submission, Comwave claimed that Mr. Stolba had no standing to bring this action because he was not a party to the Call Select Contract or the Comwave Contract. The agent named under the Call Select Contract was "Aneta Stolba, For Company to be Incorporated" and under the Comwave Contract, it was "Aneta Stolba, a Sole Proprietorship under the laws of the Province of British Columbia, Canada". Aneta Stolba is Mr. Stolba's spouse. No company was ever incorporated.
- [10] The evidence amply demonstrated that Comwave treated Mr. Stolba and Mr. Stolba, acted as Comwave's agent. In closing submissions, counsel for Comwave conceded that Mr. Stolba was its agent and had standing to bring this action. Accordingly, it is not necessary for me to address this issue.
- [11] Comwave also initially denied that it had any liability to Mr. Stolba. However, in closing argument, Comwave acknowledged that it had failed to compensate Mr. Stolba for his earning for the month of March 2013 as required under the Comwave Contract and conceded that it owes him \$8,537.86 for these earnings. It also acknowledged that it terminated the Comwave Contract without giving the required 30 days' notice.
- [12] Comwave denies liability with respect to the rest of Mr. Stolba's claims.
- [13] With respect to damages, Comwave takes issue with Mr. Stolba's calculation of damages and argues that there is no basis to award punitive damages. Comwave also specifically objects to Mr. Stolba's quantification of his losses in relation to the value of his business, loss of business goodwill, and loss on the sale of his home on the basis that expert evidence is required on these matters and Mr. Stolba's own calculations are not admissible.

ISSUES

[14] Against this background, the issues I must decide are:

A. What contract governs the relationship between Mr. Stolba and Comwave?

B. Was Comwave unjustly enriched by deducting the amount of Mr. Stolba's loan from Call Select from his compensation under the Comwave Contract?

C. Did Comwave breach the Comwave Contract by:

- i. making late payments,
- ii. making deductions for suspensions,
- iii. imposing a verification and/or validation charge,
- iv. imposing a penalty on June 20, 2012,
- v. changing the commission structure,
- vi. failing to pay residuals, and/or
- vii. terminating the contract and issuing a direction to stop sales?

D. To what monetary relief is Mr. Stolba entitled?

[15] As the plaintiff in a civil proceeding, Mr. Stolba must prove his claims on a balance of probabilities.

THE EVIDENCE

- [16] Two witnesses testified at the trial. Mr. Stolba testified on his own behalf, and Yuval Barzakay, principal and CEO of Comwave, testified on behalf of the defendant. In addition, I accepted into evidence the affidavits of Aneta Stolba (which simply attaches the Call Select Contract), and that of Sabrina Zhu, Mr. Stolba's accountant, attaching his T2 forms for 2009/2010 and 2010/2011. No objection was taken to these affidavits. I declined to admit the affidavit of Huso Hadzic, which consists of similar fact evidence, for the reasons stated in my preliminary ruling. I also admitted Mr. Stolba's affidavit number 14, excluding certain exhibits. Mr. Stolba referred extensively to this affidavit during his testimony and in cross-examination.
- [17] Mr. Barzakay was forthright in giving his evidence in chief and, although at times he was argumentative when being cross-examined by Mr. Stolba, his evidence was not shaken. I have no difficulty relying on it.
- [18] Mr. Stolba's evidence was less reliable. Both in his direct evidence and on cross-examination, he had considerable difficulty distinguishing between evidence and argument. At times, his insistence on the validity of some of his claims was self-serving and clearly inconsistent with his own documentary evidence. For example, he maintained that he was owed \$1,300 for a deduction when it was clear that he had already been partially credited for it in the amount of \$412. It was also clear that some of his evidence was affected by his subsequent research into causes of action against Comwave. His claim of coercion falls into this category. For these reasons, I place more weight on the documentary evidence of his actions than on his testimony at trial.

DISCUSSION

A. What contract governs the relationship between Mr. Stolba and Comwave?

[19] Mr. Stolba sold telecommunications products by telemarketing under successive agency agreements with different telecommunications companies. Prior to entering into the Call Select Contract, Mr. Stolba had an agency agreement with Startec. Mr. Stolba has considerable experience in the telecommunications industry and had been very successful in building his call centre operations.

[20] In May 2008, Mr. Stolba entered into the Call Select Contract. It provided that Mr. Stolba would be paid a commission of \$15.00 to \$32.50 for selling Call Select's telecommunications products, depending on the type of product and the number of customers signed up each month. These commissions would not be paid in certain circumstances, for example, if the customer failed to use the service or was not acceptable to Call Select. As well, Mr. Stolba would be paid residuals of 8.5% of the monthly amount earned by Call Select on customers signed up by Mr. Stolba.

[21] Clause 8.7 of the Call Select Contract provided as follows:

Enurement This Agreement shall enure to the benefit of, and be binding on, the respective heirs, executives, administrators, successors and assigns of the parties.

[22] Mr. Stolba calculated that his monthly payments under the Call Select Contract for the year running from May 2009 through April 2010 varied between \$35,000 and \$62,000. Sales increased from May 2009 to January 2010, peaking at \$61,723.89. They then declined to \$35,220 by April 2010. In the months of May, June and July 2010, monthly earnings remained below \$30,000.

[23] Mr. Barzakay also has a background in the telecommunications industry and founded Comwave or a predecessor company in or around 2004. Its products included long distance, home and mobile phone services using different technologies, including Voice Over Internet Phone ("VoIP"), which was relatively new at that time. Comwave entered into agency agreements with agents or "dealers" to sell its products using various sales strategies. These included media advertising, door-to-door sales, and telemarketing, among others. Some agents, such as Mr. Stolba, used telemarketing primarily or exclusively; others used different strategies.

[24] In August 2010, Comwave either acquired Call Select's assets or purchased the company. The nature of the transaction is important, because if it was an asset purchase, not a purchase of the company as a going concern, then Comwave would not be bound by the terms of the Call Select Contract. The contract governing Comwave's purchase of Call Select was not tendered in evidence. Instead, both parties relied on their oral evidence, and on emails relating to the transaction. Mr. Barzakay says that Comwave purchased Call Select's assets, including its customers, accounts receivable and equipment. He relies on an email sent by him on August 26, 2010 to agents of Call Select stating in material part as follows:

I'm am [sic] delighted to write to you today to advise that Comwave has acquired the assets of Call Select. As a current and past Agent of Call Select I would like to welcome you to the Comwave family.

As an agent you will need to sign our Agent Agreement in order to sell telephony services for Comwave and receive commissions and as such we will no longer be accepting new customer activations.

[25] Mr. Stolba says that it was not clear to him from this email whether Comwave had purchased Call Select as an operating company or only its assets. He says that he understood Mr. Barzakay to be saying that he would not be paying Mr. Stolba the residuals owed to him under the Call Select Contract and that Comwave would not accept any new customers he signed up unless he entered into an agency agreement with Comwave. Mr. Stolba characterizes this as coercion.

[26] Between August 26 and September 28, 2010, Mr. Stolba negotiated the terms of an agency agreement with Mr. Barzakay. Mr. Barzakay provided Mr. Stolba with a draft agreement to review in late August or early September.

[27] Mr. Stolba agrees that he negotiated contractual terms with Mr. Barzakay, but maintains that this was under duress or coercion, because Mr. Barzakay was withholding payments owing to him under the Call Select Contract, and was not accepting new customers. This meant Mr. Stolba had to pay his call centre employees and other costs with no money coming in. Mr. Stolba said that this meant he had to close his Vancouver call centre.

[28] The documentary evidence shows that, after Mr. Stolba received the August 26th email informing him of the Comwave purchase, he emailed Mr. Barzakay that afternoon expressing concerns about Call Select's (not Comwave's) conduct. That email states, in part:

Hi Yuval,

We have met and talked earlier, but we didn't have time to discuss anything serious regarding relationship between Agency and Company (Call Select). Here I am going to bring you up to date with my concerns. Those concerns are related to Call Select agreement and relationship, but it might affect our future relationship.

[29] In the email, Mr. Stolba also asked Mr. Barzakay to reconsider "cease of sales for Call Select". They fixed a time to speak by phone.

[30] In subsequent emails, Mr. Stolba continued to express frustration at not having been paid amounts outstanding under the Call Select Contract, and at Comwave's refusal to accept customers signed up by Mr. Stolba until an agency agreement between him and Comwave had been concluded. Mr. Barzakay informed Mr. Stolba by email on Friday, September 10, that his commissions would be processed on Monday. Mr. Stolba's email of September 15, 2010 confirmed that he received payment on that date. However, Mr. Stolba maintains that the delay meant that he had to let his Vancouver call centre team go and incur costs that he

estimated at \$20,000. Mr. Barzakay disagreed and said that the situation could have been clarified if Mr. Stolba had made enquiries of him before closing the call centre. The emails support Mr. Barzakay's position.

- [31] At the same time, the parties continued to negotiate the terms of the agency agreement. Mr. Stolba represented to Mr. Barzakay that he had sent the draft agreement to a lawyer and was obtaining legal advice. Mr. Barzakay responded promptly to a number of emails from Mr. Stolba seeking clarification or changes to various terms. Generally, Mr. Stolba wanted the Comwave agreement revised to match the terms of his Call Select Contract and Mr. Barzakay was not willing to do so.
- [32] On September 22, 2010, Mr. Stolba wrote to Mr. Barzakay that he was forwarding him the draft agency agreement with "little corrections" that had been made by Mr. Stolba's lawyer. Mr. Stolba also wrote that his lawyer had raised a concern that the draft agreement did not name "Comwave Telecom" but a new company, "Comwave Telenetworks".
- [33] Mr. Barzakay replied on September 23, 2010, the next day. He said he would review the draft agreement and respond soon, and encouraged Mr. Stolba to sign a contract with Comwave. He continued:

You are going to do very well with me and Comwave as we build a relationship. As for "Telenetworks" that is the legal company that purchased Call Select and the operating Company. I will be happy to discuss things with you in person and make sure you are comfortable.

Lucas, I want to do business with you and I don't believe there are better opportunities for us. You have built a client base and we should continue to grow them. It's a shame to lose the momentum we had. I urge you to reconsider and work with me to finish the agreement this week.

- [34] Mr. Stolba and Mr. Barzakay signed the Comwave Contract on September 28, 2010. One clause, entitled "Background" is clearly specific to the relationship between Mr. Stolba and Comwave. It states:

Comwave has acquired the customers of Call Select Inc. and the Agent was a former Agent of Call Select who signed up approximately 50,000 customers as at Sept. 15, 2010. In order to preserve the past residuals earned by the Agent, Comwave has agreed to pay residuals for the Call Select based upon signing this Agreement.

- [35] As noted, Comwave did not enter into evidence the contract governing its purchase of Call Select, which would have been the best evidence of the nature of the transaction. In these circumstances, I could draw an adverse inference about the nature of the transaction. However, this was not argued by Mr. Stolba and, in any event, I find that the evidence that is before me supports Comwave's position that this was an asset purchase transaction.
- [36] I find that the August 26, 2010 email clearly and unequivocally stated that Comwave had purchased the assets of Call Select. If Mr. Stolba was confused about whether Comwave had acquired the Call Select Contract or had acquired the company rather than its assets, he

could easily have discussed this with Mr. Barzakay as he was in direct communication with him both by email and telephone from that day on. Mr. Barzakay's communications to Mr. Stolba and other Call Select agents about the need to sign contracts with Comwave if they wanted to sell Comwave products also supports the conclusion that Comwave did not acquire Call Select in a way that required it to continue to honor Call Select's agency agreements. I do not agree with Mr. Stolba's contention that Mr. Barzakay's email of September 23, 2010 confirms that Comwave purchased Call Select as a going concern. Mr. Barzakay was responding to a question about the identity of the purchasing company, not to a question about the nature of the transaction.

- [37] Finally, the "Background" clause in the Comwave Contract expressly refers to acquiring the customers of Call Select, not the company. I find that Mr. Stolba has failed to prove that Comwave acquired Call Select in a manner that obliged it to adhere to the terms of the Call Select contract.
- [38] I also conclude that Mr. Stolba was not coerced into signing the Comwave Contract. While there is no question that its terms were less favourable than the Call Select Contract, and the circumstances were difficult for him, this falls far short of the kind of coercion sufficient to invalidate a contract. I note that Comwave paid Mr. Stolba on September 15, 2010, before Mr. Stolba signed the Comwave Contract.
- [39] The law is clear that there is a very strong public interest in enforcing contracts. The fact that one party has a much stronger bargaining position than the other does not establish coercion or duress. The party seeking to invalidate the contract must show that the coercion or pressure was so great that he or she was not acting with free will: *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183 at para. 48; *Dairy Queen Canada Inc. v. M.Y. Sundae Inc.*, 2017 BCSC 358 at para. 90. The evidence in this case only shows that Comwave had more bargaining power than Mr. Stolba. Despite that, Mr. Stolba negotiated over the period of a month and successfully negotiated a contractual provision for his Call Select residuals that was particular to him. I find that the Comwave Contract is valid and enforceable and that it governs the relationship between the parties.

B. Was Comwave unjustly enriched by deducting the amount of Mr. Stolba's loan from Call Select from his compensation under the Comwave Contract?

- [40] Mr. Stolba says that Comwave had no authority to pay itself the amount of the loan that Mr. Stolba owed Call Select and says that this constitutes unjust enrichment. Comwave says that it purchased Call Select's accounts receivable, which included its loan to Mr. Stolba, and was authorized to obtain repayment.
- [41] The evidence supports Comwave's position. Mr. Barzakay testified that Comwave's asset purchase included Comwave's accounts receivable and Mr. Stolba's debt. Mr. Stolba did not cross-examine him on this point.

- [42] At the time that his agency with Call Select ended in the fall of 2010, Mr. Stolba owed \$23,978.13 on his Call Select Loan. In 2011, he borrowed an additional \$40,000 from Comwave. Mr. Stolba's commission reports show that loan repayments were deducted monthly beginning in July 2011 and, as of July 2012, Mr. Stolba had repaid \$45,000. There is no evidence that he challenged the amount owing or the deduction of loan payments during this period.[1]
- [43] On July 16, 2012, Mr. Stolba emailed Adrian Small, a manager at Comwave, asking him to check the loan as he believed it had been paid off. In response, Mr. Small emailed back the same day asking, "what can you tell me about the loan from Call Select" and providing the total loan amount of \$63,978.13 as well as the record of payments Mr. Stolba had made to date. The figures showed that \$18,978.13 was still owing. Mr. Stolba responded immediately, thanking Mr. Small for his quick response and adding, "I am afraid to discuss this loan. Keep deducting. In 7 months will be paid off." The email conversation continued as follows:

[Mr. Small] Why are you afraid to discuss the loan? If you feel it is not correct let me know so that I can speak with Yuval.

[Mr. Stolba] I am afraid to discuss anything because of events from last October, November and December. After that I prefer to get it going as is and not discuss anything if possible. Anyway, seven Months will go fast and we will be able to grow after that. \$2500 means 3 new Agents per month and slight growth.

Thanks

- [44] On cross-examination, Mr. Stolba acknowledged that the initial loan amount recorded in Mr. Small's email include the Call Select and the Comwave loans to him. This email chain shows that Mr. Stolba acknowledged the loan and directed Mr. Small to keep deducting the payments. His reference to being "afraid" does not establish that he did not acknowledge the debt, only that he did not want to discuss it. I conclude that Comwave acquired the balance remaining on Mr. Stolba's Call Select loan and was authorized to require Mr. Stolba to repay it.

- [45] Mr. Stolba's claim of unjust enrichment is dismissed.

C. In what ways did Comwave breach the Comwave Contract?

i. Late Payments

- [46] With respect to when commission payments must be made, the Comwave Contract expressly states that "[c]ommissions will be paid to the Agent on the 15th of each month for the previous calendar month's Eligible Activations."
- [47] The documentary evidence tendered by Mr. Stolba does not show whether he received monthly commission payments for the previous month's sales before or after the 15th of the month. He testified that payments were delayed, but did not provide any specifics. There is

documentary evidence of one instance of late payment in June 2011. Mr. Stolba complained about it during an extended email discussion with Mr. Small in which Mr. Small expressed concern about Mr. Stolba's low revenue and high number of account cancellations. It appears that Mr. Stolba was paid on or around June 23, and did not raise the matter again. He did not treat the late payment as a breach of the contract or demand compensation for any damages caused by the delay.

- [48] The monthly commission reports from March 13, 2012 to March 11, 2013 tendered by the defendant are all dated before the 15th of the month. In his submissions, Mr. Stolba stated that he regarded Comwave's payments as late because they were paid later than the date stipulated for payment of commissions under the Call Select Contract.
- [49] However, the Call Select contract was not the contract between these parties. While there is evidence that there was an instance of late payment in June 2011, there is no evidence that Mr. Stolba treated this as a breach of contract. Rather, both parties continued to act under its terms. I conclude that Mr. Stolba's claim cannot succeed on this ground.

ii. Suspension Charges

- [50] With respect to the imposition of a charge for "suspensions", Mr. Stolba argues that the absence of any specific provision in the Comwave Contract to deduct "suspensions" means it had no authority to make deductions for suspensions. He points to the very specific provisions authorizing "chargebacks" or deductions from commissions where a customer becomes ineligible for activation within certain times after the sale.
- [51] However, the Comwave Contract contains a clause that authorizes Comwave to make deductions from agent commissions, as long as they are reasonable and documented to the agent. It also contains a specific mechanism to dispute such deductions. The clause entitled "Right of Set Off" is as follows:

Comwave shall act reasonably when deducting amounts from Agent Commission and such amounts shall be documented to the agent. For commission deductions, Agent may dispute any deductions by filing a Commission adjustment form.

- [52] To succeed on this claim, Mr. Stolba must prove that Comwave failed to comply with the requirements in this clause. He must also explain whether he followed the contractually-mandated process for disputing such deductions and, if he did not, the reason for his failure to do so. In this regard, under the heading "Errors and Omissions" the Comwave Contract states that disputes regarding payments must be filed within 14 days using a "Commission Adjustment Claim Form."

- [53] Mr. Stolba pointed to an email he received on January 5, 2012, with the subject line, "December Cancellation Percentage as of December 31st". It records Mr. Stolba's total December 2011 sales as 292, with 54 (18%) recorded as "cancellations", 107 (37%) recorded as "suspensions", "Net December Sales" of 131 (45%) and "Active Accounts with Usage" of 95 (73%). This email does not say whether Comwave deducted any amounts for cancellations or suspensions, it simply lists the numbers.
- [54] Other emails between Mr. Stolba and Mr. Small in June 2011 addressed reporting on suspended and cancelled accounts. In them, Mr. Stolba complained to Mr. Small that the new commission plan was not profitable for him, demonstrating that Mr. Stolba what suspensions were by that point.
- [55] The monthly commission reports from March 2012 through March 2013 do not list or refer to suspensions. Mr. Barzakay did not testify about them in his examination-in-chief, and was not asked about them on cross-examination.
- [56] Mr. Stolba has failed to establish whether any deductions were made for suspensions or if they were, in what amounts.
- [57] Mr. Stolba admitted in cross-examination that he did not dispute any deductions by filing the form specified in the Comwave Contract. He said he had never heard of this process and would not know how to get the form. He said that he voiced his complaints to Mr. Small by email.
- [58] Comwave relies on these contractual provisions to argue that Mr. Stolba effectively waived any right to challenge any deductions from his commissions because he did not use the required process and complain within the time limit.
- [59] Had Mr. Stolba shown that he complained about the reasonableness of Comwave's deduction for suspensions within the 14-day time limit, his failure to use the stipulated form would not bar his claim. However, the time limit on disputing deductions is not merely a formality. It provides Comwave with certainty about when its deductions can no longer be contested. Mr. Stolba provided some evidence that he was unhappy with the commission structure and wanted some changes made. But this evidence does not establish that Mr. Stolba had suspensions deducted from commissions, or that he informed Comwave in a timely way that he was disputing the reasonableness of a deduction for suspensions.
- [60] For these reasons, Mr. Stolba has not satisfied me that Comwave breached the Comwave Contract by deducting for suspensions.

iii. Validation/Verification Charges

- [61] Turning to the validation/verification charge, the Comwave Contract does not provide for the imposition of such a charge. However, in addition to the "Right of Set Off" clause, under the heading "Agent", the Comwave Contract reserves to Comwave the right to "change, modify or delete any product or service listed in Schedule B." Schedule B references a website containing a description of Comwave's products and services, which changed from time to time.
- [62] On September 30, 2011, Comwave sent "Dealer Bulletin #81" to its agents, including Mr. Stolba. It stated that, effective October 3, 2011, it was imposing a \$2 verification charge on all Home Phone sales accounts and a \$50 administration fee for each unauthorized sale in addition to a chargeback of associated charges. In cross-examination, Mr. Stolba admitted that this was the source of the verification charge, but said that he did not know how a \$2.00 verification charge referenced in the Dealer Bulletin became a "10% validation charge" that, he said, was listed on his monthly commission reports. There is no evidence that anyone other than Mr. Stolba described this charge as "10%". There is also no evidence that Comwave charged anything other than the amounts stated in Dealer Bulletin #81 for verification/ validation.
- [63] Mr. Stolba complained about the verification/validation charge in an email to Mr. Small on January 15, 2012. He wrote that the combination of high cancellations, low approvals and verification charges were making it difficult for him to make a profit. He also emailed Mr. Small on April 10, 2012 complaining about "still being charged about 10% for verification." In emails dated June 20, 2012, Mr. Stolba stated, "still don't know what is validation charge. That was introduced a few months ago". Mr. Small responded, explaining that the "verification" charge was/is the charge that we implemented to cover the cost of calling the accounts to verify whether they authorized the service".
- [64] I am satisfied that the terms "validation" and "verification" were used interchangeably. There is no evidence at all to support Mr. Stolba's contention that he was charged for both "validation" and "verification." There is no evidence that Mr. Stolba was charged a 10% validation charge. The evidence demonstrates that he was charged the \$2.00 verification fee as referenced in Bulletin #81. This was explained to Mr. Stolba in Bulletin # 81, and personally in Mr. Small's email of June 20, 2012. Finally, Mr. Stolba did not establish that he disputed the reasonableness of this charge within the 14 days of receiving the Dealer Bulletin that announced and explained it.
- [65] Mr. Stolba has not proved that Comwave breached the Comwave Contract by imposing a verification/validation charge.

iv. Cancellation Deduction

[66] Mr. Stolba claims that Comwave imposed a deduction or penalty of \$1,300 on June 20, 2012 that was not authorized under the Comwave Contract. In its Response to Civil Claim, Comwave stated that any charges, deductions or penalties made by Comwave were contractually authorized. It did not address this specific claim in its evidence or submissions at trial.

[67] Mr. Stolba tendered evidence of a lengthy email exchange he had with Mr. Small on June 20, 2012. The first email is from Mr. Small to Mr. Stolba. In it, among other things, he says:

Lucas,

I have not forgotten you. I'm hoping to have you payment issue resolved today as the amount I am trying to get reversed is fairly significant - \$1300.

[68] Mr. Stolba's response and the following emails address other issues, but later that day, he emailed Mr. Small asking, "What happened to this \$1300 unauthorized account, was it our fault?" Mr. Small responded, saying, "I reviewed the \$1300 cancellation charge and the sale was not valid. It should not have been submitted."

[69] The conversation continued as follows during the remainder of the day on June 20:

[Mr. Stolba] Hi Adrian, Azar checked the recording and the sale is not good. The customer had HP 6 months free and Comwave paid us \$150. What happened to this account, there was a charge for over \$1300? For some reason it was approved from us, that was mistake, agent didn't tell about cancellation penalties. Thanks, Lucas

[Mr. Small] The charge relates to the cancellation penalty that was applied

[Mr. Stolba] the cancellation penalty for customers 3Y contract was deducted from us?

[Mr. Small] Yes I spoke to Yuval about reversing it but was turned down.

[Mr. Stolba] Hi Adrian, I understand about the cost that company need to recover for such mistake, but this might be more than the real cost of cancelled sale. Anyway, thanks for trying to recover the amount for us. Lucas

[70] On June 21, Mr. Stolba wrote to Mr. Small again, informing him that the sale in question was completed in November, before he had received a note from Comwave that "mentioning \$20 penalty should be included in the script and we included it after that."

[71] Mr. Small responded on June 22, stating that he would see what he could do and would get back to Mr. Stolba. Later that day, he emailed Mr. Stolba, stating, "I got the amount adjusted based on the \$20. Will be applying a credit next month of approximately \$412." Mr. Stolba responded by thanking Mr. Small and saying, "so it is going to be deducted \$900+, right?". Mr. Small replied, "Yes "

- [72] In his testimony, Mr. Stolba emphasized that the sales subjected to the \$20 penalty to which he was objecting had occurred before Comwave imposed the penalty. As noted, he was not questioned about this issue in cross-examination.
- [73] The evidence supports the conclusion that Mr. Stolba complained at some unestablished date before June 20, 2012, about the sum of \$1300 that had been imposed on sales resulting in customer cancellations. He did not claim that Comwave had no contractual authority to take such action. The basis of his complaint was that (a) no penalty should have been imposed retroactively - that is, on cancellations resulting from sales made in November 2011, which was before agents were notified of the penalty, and (b) the amount of \$1300 was too high. Mr. Small's emails indicate that he saw merit in Mr. Stolba's argument and that \$412 was credited back to Mr. Stolba from the original \$1,300 that had been deducted.
- [74] In the face of this evidence, it is untenable for Mr. Stolba to maintain that he is still owed \$1300. At most, he would be entitled to claim \$888. However, Mr. Stolba has not established that it is more likely than not that Comwave had no authority to deduct the \$888. In the emails, Mr. Stolba acknowledges that there was some mistake on his agents' part. Mr. Small also acknowledges an error and credits Mr. Stolba with a portion of the \$1,300, and Mr. Stolba appears to accept this. Having done so, it is not open to Mr. Stolba to change his mind.
- [75] The time limit in the Right of Set Off clause also supports this conclusion. While Mr. Small accepted Mr. Stolba's dispute about the \$1300 deduction whether or not it was made within 14 days, there is no evidence that Mr. Stolba continued to or renewed his dispute about the \$888 deduction within 14 days of June 22, 2012.
- [76] I conclude that Mr. Stolba cannot succeed in this aspect of his claim.

v. The New Commission Structure

- [77] Mr. Stolba claims that Comwave unilaterally changed his commission structure contrary to the terms of the Comwave Contract. Comwave responds that it did not do so. It said that it proposed a new commission structure relating to sales of home phone services, which Mr. Stolba did not accept.
- [78] There is very little evidence relating to this issue. Mr. Stolba testified in chief that an email dated July 4, 2012 demonstrated that Comwave was changing the commission structure. He was not cross-examined on this point. Mr. Barzakay gave evidence about the commission structure in Schedule A to the Comwave Contract, but was not asked in his examination in chief or in cross-examination about the July 4 email.
- [79] Schedule A to the Comwave Contract makes it very clear that the commission payable varies with the particular service (home phone and or long distance products of various kinds) and the term of the plan purchased (one, two or three years). The first clause of the schedule states, under the heading, "Agent Commissions":

The following list of Commissions is subject to change by Comwave, from time to time based on current market trends and packages or plans that may be introduced or discontinued.

[80] The Comwave Contract expressly authorizes Comwave to unilaterally change commissions associated with its various products and services.

[81] The email of July 4, 2012, upon which Mr. Stolba relies, is to him from Mr. Small. The subject line is, "RE: Commission Change for HP". "HP" refers to "home phone". The email states:

Please refer to the bulletin I sent out as it clearly states the new commission structure does not have charge backs please review and let me know if you have any questions.

Adrian Small

[82] It is evident that this email is in response to a prior email; however, no prior or subsequent emails are in evidence. The dealer bulletin to which the email refers is also not in evidence.

[83] The evidence fails to support Mr. Stolba's claim that Comwave breached the Comwave Contract on this basis.

vi. Failure to Pay Owed Residuals

[84] Mr. Stolba's claim about residuals owed to him is unclear. In his Notice of Civil Claim he alleges that Comwave accepted responsibility "for the issue of residuals due to cancellations", and the allegation is reiterated in his opening and closing submissions. However, the only evidence Mr. Stolba pointed to was an email dated September 14, 2012, from Mr. Small to Mr. Stolba, stating as follows:

Lucas,

The residuals for your previous HP sales were an issue due to the cancellations for which we are partly responsible. With the new structure this should not be an issue.

[85] Mr. Stolba referred to this email briefly in his testimony, saying only that it showed Comwave took some responsibility for cancellations. This evidence is completely insufficient to establish that Comwave breached the contract in its payment of residuals to Mr. Stolba.

[86] Another issue relating to payment of residuals was raised at the trial. It concerned the difference between the rate established for payment of residuals under the Call Select Contract, which was 8.5%, and the residual rate under the Comwave Contract, which was 6%. The evidence was that Comwave and Mr. Stolba agreed Comwave would continue to pay Mr. Stolba at the 8.5% rate for residuals relating to sales he had made during the term of the Call Select Contract for a period of four months. After that, the rate for those sales would decrease to 6%. For any other sales made under the Comwave Contract, Mr. Stolba would receive 6% from the outset. Mr. Stolba was clearly unhappy about the lower rate, but this does not establish any breach of the Comwave Contract.

[87] I conclude that Mr. Stolba has not established this claim.

vii. Termination of Contract and Direction to Stop Sales

[88] There is no dispute that Comwave terminated the Comwave Contract on March 20, 2013 and directed Mr. Stolba to immediately stop all telemarketing activity, or that it did so without complying with its contractual obligation to give 30 days' notice. Comwave has conceded this breach. The dispute relating to termination is whether or not Comwave had cause to terminate the contract. The parties appear to agree that, if Comwave had cause, Mr. Stolba's damages are limited to those flowing from the failure to give 30 days' notice, but if Comwave did not have cause, Mr. Stolba is entitled to reasonable notice at common law.

[89] The relevant contractual termination provisions read as follows:

Comwave may terminate this Agreement upon thirty (30) days notice if:

- i. The Agent fails to meet the Sales Quotas set by Comwave for two (2) consecutive quarters of any six (6) months out of twelve (12) months;
- ii. The substantiated conduct or practice of the Agent, or its affiliates, directors, officers, employees or shareholders that has not been cured within seven (7) days of written notification by Comwave is in the opinion of Comwave in its sole discretion, is injurious to the goodwill or reputation of Comwave;

...

Upon termination of this Agreement, for any reason, any outstanding Commissions will be held for ninety (90) days as set-off against Chargebacks and Comwave's obligation to pay any future Residuals shall terminate.

[90] Comwave argues that it had cause to terminate the Comwave Contract for two reasons. First, as a result of action by the Canadian Radio and Telecommunications Commission ("CRTC"), it decided to stop all telemarketing activities as injurious to its goodwill or reputation. Second, Mr. Stolba had failed to meet his sales quotas in six of the twelve months preceding March 2013.

[91] Mr. Stolba did not dispute Mr. Barzakay's evidence about what led to the termination of the Comwave Contract. Starting in 2011 and continuing through 2013, the CRTC was receiving many complaints about Comwave's telemarketing activity, including violations of the "Do Not Call" ("DNC") list and calls at inappropriate times. As a result, the CRTC first pressured Comwave to alter its telemarketing activity and then launched an investigation into Comwave, threatening to impose fines of up to \$1,000,000. This led to a legal settlement between Comwave and the CRTC in March 2013, under which Comwave agreed to pay a fine of \$100,000 and to stop all telemarketing.

[92] Prior to the settlement, Comwave notified its agents, including Mr. Stolba, about violations of the DNC list and unprofessional calls through dealer bulletins issued on November 17, 2011 and January 11, 2012. On February 14, 2012, Comwave notified all agents that any call centre found to have called a specified list of phone numbers would have their contract terminated immediately. On March 13, 2012, Comwave issued a dealer bulletin that warned agents that their contracts would be terminated if they were found to have violated the DNC list, failed to "scrub" their contact list against the DNC list every 30 days, failed to have a valid Called ID/call display number that can be called back by a customer, or failed to identify themselves to customers by agency name and as a "Comwave Agent".

[93] On March 20, 2013, Mr. Small wrote to Mr. Stolba terminating the Comwave Contract, as follows:

Please be advised that Comwave will no longer accept activations from you that are derived from Telemarketing. After receipt of numerous complaints and careful consideration, we have decided as a company policy to refrain from telemarketing or accepting sales from telemarketing activities, which have the potential to tarnish the company's image and brand and are subject to detailed regulation by the CRTC. Moreover we are amending the dealer agreement to reflect that telemarketing the Comwave brand is absolutely forbidden under any circumstances.

Pursuant to your current agreement, we are terminating your agency and access to our online activation portal while we work together to better understand your future sales strategies vis-à-vis; door-to-door sales, community newspaper, trade shows, and walk-in traffic.

[94] The parties agree there is no proof that Mr. Stolba's call centres were engaging in any of the activity generating complaints to the CRTC or that he was acting contrary to the requirements set out in the various dealer bulletins. Mr. Stolba argues that without such evidence, Comwave was not entitled to terminate his agency because there was no proof that it was injurious to Comwave. I do not agree.

[95] The termination clause expressly permits Comwave to determine what is injurious to its reputation. Comwave was entitled to determine, as it did on the basis of the threatened CRTC sanctions, that telemarketing itself, even if carried out in compliance with its own requirements, was now injurious to its reputation. There is no question that Mr. Stolba was engaging in telemarketing. In the circumstances, that was the "substantiated conduct" that Comwave had determined was injurious. It did not have to prove that Mr. Stolba was calling people on the DNC list.

[96] Although this point was not raised by Mr. Stolba, I note that the termination provision also requires Comwave to give Mr. Stolba seven days' written notice prior to termination to "cure" their conduct. Comwave's prior communications only gave Mr. Stolba notice about certain telemarketing activities, not that he had to stop telemarketing altogether.

- [97] However, I find that this additional notice period would have changed nothing. Mr. Stolba was only engaged in telemarketing through call centres in Vancouver and off-shore. The March 20, 2013 letter broached the possibility of Mr. Stolba adopting non-telemarketing based sales strategies, and Mr. Barzakay testified that Comwave was willing to support Mr. Stolba in pursuing other sales strategies. Mr. Stolba did not provide any evidence that he was willing to do so, or that this notice period would have made any difference to him. He did not give evidence of what he did after he received the termination letter, stating only that although he had prior experience in other forms of marketing, he had no money to try other strategies and did not pursue other options.
- [98] I find that Comwave had cause to terminate the contract because it had determined that telemarketing was injurious to its reputation.
- [99] In the event that I am wrong in concluding that Comwave can rely on injury to its reputation as cause for termination without having complied with the seven day notice requirement, I will address Comwave's argument that it terminated the Comwave Contract because Mr. Stolba failed to meet his sales quotas.
- [100] Schedule B to the Comwave contract establishes that Mr. Stolba's sales quota was 1500 sales per quarter. Mr. Stolba relies on a letter from Mr. Barzakay, dated December 19, 2011 which states that his quarterly quota is 1200 sales. While Mr. Barzakay said that this was an error, there is no evidence that it was ever corrected, and I find that Mr. Stolba is entitled to rely on it.
- [101] The evidence shows that Mr. Stolba's frequently did not meet his sales quota. Mr. Stolba did not really contest this; rather, he blamed Comwave for making his business unprofitable. In his letter of December 19, 2011, Mr. Barzakay gave Mr. Stolba written notice of Comwave's concern that Mr. Stolba was not meeting his quotas. The letter refers to prior conversations on the subject, and an email dated November 7, 2011 from Mr. Barzakay to Mr. Stolba gives notice of Comwave's intention to terminate Mr. Stolba's agency based on his likely failure to achieve his sales quote (referred to in this email as 500 per month) for the third and fourth quarters of 2011.
- [102] Mr. Stolba argued strenuously that Comwave did not have cause to terminate the Comwave Contract for low sales at this point because the letter was sent before his December numbers were in. However, Comwave is not relying on its letters of November and December 2011 as cause for termination, as it did not terminate the contract then. Rather, this evidence establishes that Mr. Stolba was put on notice as early as 2011 that his low sales were of great concern to Comwave.
- [103] The evidence tendered by Comwave and not contested by Mr. Stolba shows that his sales for the year preceding termination of his contract in March 2013 were:

February 2012 139 sales

March 2012 209 sales

April 2012 133 sales

May 2012 105 sales

June 2012 80 sales

July 2012 110 sales

August 2012 number of sales not in evidence

September 2012 153 sales

October 2012 106 sales

November 2012 108 sales

December 2012 115 sales

January 2013 145 sales

February 2013 121 sales

[104] By any measure, by March 2013, Mr. Stolba had failed to meet a sales quota of 1200 per quarter for two consecutive quarters of any six months out of twelve months. Comwave therefore had cause to terminate the Comwave Contract. In this regard, I do not accept Mr. Stolba's assertion, which was strongly denied by Mr. Barzakay and for which there is no documentary support, that his home phone sales should be multiplied by four.

[105] I am also satisfied on the evidence that, while Comwave did not provide the 30 days' formal written notice of termination, it repeatedly raised the issue of Mr. Stolba's low sales with him from late 2011 onwards. I do not accept that Mr. Stolba could reasonably have been surprised to learn that his contract was being terminated on this basis.

[106] Mr. Stolba argues that Comwave's failure to specify his failure to meet sales quotas as the reason for the termination in its letter of March 20, 2013 means that it cannot rely on this as cause for termination.

[107] However, the law is well-settled that an employer does not have to specify the reason for termination in a termination letter: *Lake Ontario Portland Cement Co. v. Groner*, [1961] SCR 553, at 564. As noted in *Van den Boogaard v. Vancouver Pile Driving Ltd.*, 2014 BCCA 168:

[34] Regardless of whether dismissal for after-acquired cause or for cause is being argued, the issue is whether the employer can establish that, at the time of dismissal, there were facts sufficient in law to warrant a dismissal. . . .

[108] It was not necessary for Comwave to state this reason for termination in the letter of March 20, 2013. As a practical matter, since it had now determined that it would no longer engage in telemarketing at all, Mr. Stolba's low sales were beside the point.

[109] I find that Comwave breached the Comwave Contract by failing to give Mr. Stolba 30 days' notice of termination.

D. What damages flow from breach of the Comwave Contract?

[110] Mr. Stolba must prove his damages resulting from the breach of contract. A party claiming damages bears the onus of proving the loss and its quantum. Where there is evidence available to prove the loss "it is incumbent on the plaintiff to lead it" and if this does not occur, the court can decline to award damages: *Vancouver Canucks Limited Partnership v Canon Canada Ltd.*, 2015 BCCA 144, para 146.

[111] However, difficulty in fixing the precise quantity of damages does not bar a damages award. In *Century 21 Canada Ltd. Partnership v. Rogers Communications Inc.*, 2011 BCSC 1196 the court held:

[394] Just because the loss is difficult to establish does not mean damages will not be awarded. However, that assumes there are difficulties in quantifying the loss, not the situation where the plaintiff has chosen not to lead specific evidence on the issue.

[112] A court can also give nominal damages where the proof of damage is minimal. In *Century 21 Canada Ltd.*, Punnett J. awarded \$1,000 in favour of the plaintiff where there was a lack of evidence of loss and expenses incurred related to the actions of the defendant: para. 397. The same amount was awarded in *San-Co Holdings Ltd. v Kerr*, 2009 BCSC 1747 where the plaintiff could not prove damages resulting from the defendant's misrepresentation.

[113] The purpose of a damages award can either be to put the plaintiff in the position he/she would have been in if the contract had been performed (expectation damages), or to compensate the plaintiff for the benefit gained by the defendant because of the breach (restitution damages), but not both: *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43 at para. 25.

[114] Mr. Stolba tendered a great deal of evidence about the calculation of damages, almost all based on the untenable premises that Comwave breached the Comwave Contract at its inception or was bound by the Call Select Contract. He calculated his loss of earnings for each year of the term of the Comwave Contract using as a base the revenues he earned in the last year of the Call Select Contract in 2009-2010, (calculated as \$549,565), less any revenues he actually earned during the term of the Comwave Contract. On that basis, he says he is owed \$1,048,706 for loss of revenue plus interest.

[115] Mr. Stolba calculates the value of the goodwill of his business at \$810,648, also based on the Call Select Contract, plus interest. He also seeks repayment of the full amount of the loans he obtained from Call Select and from Comwave plus interest (totalling \$70,614) on the basis that he invested the money in his call centres and lost it because of Comwave's conduct. On the same basis, he seeks repayment of the second mortgage he took out on his home and also the loss caused by having to sell it quickly on January 8, 2012, in order to meet his business expenses. He calculates this figure as \$3,700,449.

- [116] Mr. Stolba also seeks punitive damages of \$100,000.
- [117] Mr. Stolba also seeks damages for unjust enrichment, which he adds to the damages he says flow from Comwave's breach. Under this heading, he seeks repayment of the Call Select loan again, repayment of verification/validation charges (calculated at \$9,909), as well as commissions that he says were unpaid for March 2013 and April 2013 (totalling \$21,344.65). I have already dismissed his unjust enrichment claim.
- [118] I have found that Comwave's breach of the contract occurred on March 20, 2013, when it failed to give Mr. Stolba 30 days' notice prior to termination. Mr. Stolba is not entitled to any losses preceding this date.
- [119] Even if Mr. Stolba had been able to establish a breach of contract before March 20, 2013, the last year of his Call Select Contract is not an appropriate measure of damages. Further, Comwave was entitled to require Mr. Stolba to repay his loans. Mr. Stolba is not entitled to recover regarding the second mortgage and loss on the sale of his house. These were business decisions Mr. Stolba made in an effort to salvage a failing business and not attributable to Comwave. Had I concluded otherwise, I would have agreed with Comwave that business and home valuations require expert evidence.
- [120] Similarly, with respect to the claim for loss of goodwill, I accept Comwave's submission that expert evidence would have been required. See *WeGo Kayaking Ltd. v. Sewid*, 2007 BCSC 49 at para 103. In any event, Mr. Stolba has not proved that there was any goodwill in his business at the time of breach on March 20, 2013. Mr. Stolba led no evidence to establish the value of his business at that time.
- [121] Comwave conceded that it has not paid Mr. Stolba for his earnings in March 2013, prior to the termination, which would have become payable on April 15, 2013. Mr. Stolba calculated this amount at \$8,537.86. While Mr. Stolba also claimed he was not paid in March for his February earnings, the evidence shows that he received a payment in this amount. Mr. Stolba is therefore entitled to \$8,537.86.
- [122] What losses flow from Comwave's failure to give 30 days' notice? Expectation damages, or putting Mr. Stolba back in the place of having 30 days notice, is appropriate in this case. On the evidence before me I am satisfied that, had Mr. Stolba been given notice, he would most likely have continued to operate his company for an additional month. Each time Comwave had previously raised concerns about his low sales and in late 2011, when it gave notice of its intention to terminate on this basis, Mr. Stolba renewed his efforts to increase sales rather than taking steps to change his business.
- [123] The amount owed Mr. Stolba for his March sales provides a reasonable basis for estimating what his sales would have been during the notice period. Taking into account the declining sales rate, I estimate that Mr. Stolba would have earned \$8,000 in sales during the notice period.

- [124] Mr. Stolba provided no evidence about whether having 30 days' notice would have allowed him to avoid incurring some of the expenses arising from the unexpected termination of the Comwave Contract. He could have done so. A plaintiff must provide enough evidence to ground an estimate of damages; the court will not engage in speculation: *Anani v. Uniglobe Travel (Western Canada) Inc.*, 2004 BCSC 824. I therefore make no award to compensate for this possible loss.
- [125] I dismiss Mr. Stolba's claim for punitive damages as wholly unwarranted in this case. Comwave's conduct, although in breach of its contract with Mr. Stolba, was in no way reprehensible or deserving of punishment.

CONCLUSION

- [126] In conclusion, I find that Comwave had cause to terminate the Comwave Contract, but failed to give the required 30 days' notice and breached the contract in that respect alone.
- [127] I order Comwave to pay Mr. Stolba \$8,537.86 plus interest calculated from April 15, 2013 for the amount owing on his commissions for March 2013, and \$8,000.00 in compensation for what he would have earned in the notice period, totalling \$16,537.86.
- [128] Mr. Stolba claims compound interest, at least in respect of his claim for goodwill. I found he is not entitled to damages regarding goodwill, but I would also not award it for the other claims. Compound interest is not available pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79; *British Columbia (Forests) v. Teal Cedar Products Ltd.*, 2013 SCC 51 at paras. 8-10, and equitable compounding interest is not appropriate in this case. The fact that Mr. Stolba did not have use of the funds until now is not a basis to award compound interest: *Swiss Reinsurance Company v. Camarin Limited*, 2013 BCSC 1066 at para. 76.
- [129] Mr. Stolba is entitled to interest on the total amount of damages, \$16,537.86 pursuant to the Court Order Interest Act.
- [130] I dismiss the remainder of Mr. Stolba's claims.
- [131] As success in this case has been divided, each party shall bear its own costs.

"TYER J."

- [1] There is an earlier email exchange between Mr. Small and Mr. Stolba in November 2010, in which Mr. Small asks Mr. Stolba about his plans for paying back the Call Select loan. Mr. Stolba initially agreed to discuss it, but asked whether he had to discuss it with Comwave. In a follow-up email to Mr. Small, Mr. Stolba stated his belief that no money was owing to Call Select because it had engaged in various allegedly unprofessional practices that caused Mr. Stolba to lose money. This does not erase the debt, it only shows Mr. Stolba considered it unfair. (See exhibit A, tab 45).

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