

Decision 90 09 015 SEP 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PTT Telecommunications (U-5108-C),
et al.,

Complainant,

v.

Pacific Bell (U 1001 C), Pacific
Telesis, et al.,

Defendants.

ORIGINAL

Case 90-05-002
(Filed May 7, 1990)

O P I N I O N

For the third and, we trust, final time PTT Telecommunications (complainant) seeks reparations for what it believes was Pacific Bell's wrongful termination of service in May, 1987. We dismissed complainant's first complaint (Case (C.) 87-06-042, filed June 26, 1987) with prejudice in Decision (D.) 88-11-024. Complainant filed substantially the same complaint on March 30, 1989, and we dismissed it as well, with prejudice (D.89-07-048).

We now have the same complaint before us, once again. Pacific Bell filed a timely answer and motion to dismiss. Complainant made no timely response. We will grant the motion to dismiss. We also find it necessary to take appropriate steps to prevent further abuse of our complaint forum by complainant.

The facts as they appear from our two earlier dismissals and from the allegations in the three complaints are as follows. In 1987 complainant was a certificated interexchange telecommunications reseller. A dispute arose in the course of securing customer billing services from defendant. Complainant failed to pay certain charges when due, resulting in the disconnection of his Feature Group D lines. Complainant deposited

\$7,009.53, representing a portion of the amount owed to defendant and filed his first complaint.

The administrative law judge (ALJ) in that complaint scheduled a hearing for January 12, 1988. The hearing was rescheduled at complainant's request to April 12-14, 1988, but complainant failed to appear and did not file written testimony on the dates he had agreed upon. The ALJ again rescheduled the filing of testimony and set tentative dates for hearing in July and August. When once again complainant failed to file testimony, the ALJ allowed a final courtesy period in which complainant did not respond. Defendant moved for dismissal and the complaint was dismissed on November 9, 1988 with prejudice. The \$7,009.53 deposit was awarded to defendant. Complainant did not file a timely petition for rehearing. In the second complaint filed less than five months later, we found that complainant alleged the same events and sought the same relief as the first. Accordingly, we dismissed it with prejudice.

Now in this third attempt, complainant specifically incorporates both of his earlier pleadings by reference "as though set forth at length". Complainant then proceeds in 18 numbered paragraphs to present 7 additional "causes of action". Replete with legal non-sequitur and citation to authority not on point, these pages do not contain a single factual allegation which is unrelated to the subject matter of our two earlier dismissals. Rather, complainant merely makes numerous, creative attempts to argue that defendant has violated some rule or law.¹

But as we said in D.89-07-048, "It is well settled law that the dismissal of an action with prejudice, is bar to any

¹ For example, complainant argues that, by terminating his reseller service, Pacific Bell assumed control of PTT Telecommunications in violation of Public Utilities Code §§ 851, 852, 853, and 854.

future action on the same subject matter.' Wouldbridge v. Burns, 265 Cal. App. 2d 82, 84 (1968), (emphasis in original)'. Because his earlier complaints were dismissed with prejudice, he may not bring any complaint against the defendant arising from the termination of his service in May, 1987.

Complainant's sole acknowledgement of our earlier dismissals comes "in defense of" that portion of this complaint which purports to repeat and reallege his earlier complaints. Complainant cites Code of Civil Procedure § 452 and Smith v. Kern County Land Co. (1958) 51 Cal. 2d 205 and Porter v. University of San Francisco (1976) 64 Cal. App. 3d 825 in arguing that pleadings must be liberally construed. Complainant overlooks the fact that his complaints were not dismissed for any flaw in the pleadings; his complaints were dismissed for his failure to prosecute them.

Complainant further cites Watson v. Watson (1958) 161 Cal. App. 3d 35 in arguing that his "legal disabilities in comparison to defendants were not taken into consideration...." The Watson case involved a default judgement in a divorce proceeding where a husband took advantage of his wife's inability to read and speak English in order to win possession of their community property. Complainant does not mention the exact nature of his "legal disabilities". It is clear, however, that he speaks and writes in English, and he is not incapable of filing legal documents and appearing at a hearing. His failure to prosecute his complaint when given four opportunities to do so clearly was not the result of exploitation by the defendant.

It is our hope that complainant will understand that he simply has no legal claim to bring before us. Whatever such claim there might have been, and whatever the merits, they were completely extinguished as the result of his failure in C.87-06-042 to prosecute them. We consider it unfair of complainant to repeatedly bring his stale complaint before us, unnecessarily taxing the resources of this Commission and those of the defendant

as well. Therefore in dismissing this complaint we admonish complainant that we will summarily reject any further filings which name Pacific Bell as a defendant and which appear to relate to facts alleged in C.87-06-042.

Findings of Fact

1. Complainant is a certificated interexchange telecommunications reseller.

2. In 1987 complainant came into a dispute with defendant and filed C.87-06-042.

3. Complainant deposited \$7,009.53 with this Commission representing a portion of the amounts then due and payable to Pacific Bell.

4. Complainant was given at least four opportunities to present testimony and exhibits in support of his complaint.

5. Complainant failed to prosecute his complaint.

6. This Commission dismissed C.87-06-042 with prejudice.

7. On March 30, 1989 complainant filed C.89-03-049 against Pacific Bell.

8. In D.89-07-048 we found the allegations and relief sought in C.89-03-049 to be the same as those disposed of in D.87-06-042, and we dismissed that complaint, again, with prejudice.

9. This complaint expressly repeats both earlier complaints "as if set forth at length again."

10. This complaint alleges nothing, which if proved, would involve a different subject matter from that of the complaints which we have dismissed with prejudice.

11. Defendant filed a timely answer and motion to dismiss the complaint with prejudice.

12. Complainant did not file a timely response to the motion.

13. Repeated filings of this nature after dismissal with prejudice results in the waste of Commission resources and those of the defendant as well.

Conclusions of Law

1. C.90-05-002 should be dismissed with prejudice.
2. The Commission should not accept any further complaints alleging facts and seeking relief related to the termination of complainant's service by Pacific Bell for nonpayment in 1987.

ORDER

IT IS ORDERED that:

1. C.90-05-002 is dismissed with prejudice.
2. The Docket Office shall immediately transmit without acceptance any complaint filed after the effective date of this order by or on behalf of PTT Telecommunications and naming Pacific Bell, Pacific Telesis as defendant to the Chief ALJ.
3. The Chief ALJ shall examine any complaint received from the Docket Office pursuant to Ordering Paragraph 2. Upon determining that the complaint states a claim which is barred by D.88-11-024, the Chief ALJ shall return the complaint to complainant and no further action shall be taken.

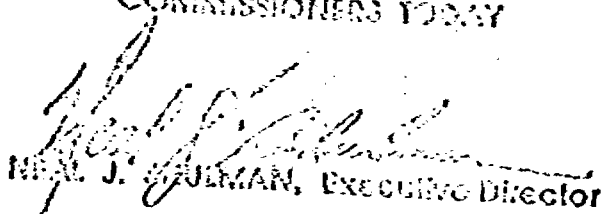
This order is effective today.

Dated SEP 12 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
PATRICIA M. ECKERT
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SULMAN, Executive Director