

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the formal complaint of)
Michigan Bell Telephone Company d/b/a)
AT&T Michigan against B&S Telecom, Inc.,)
Quick Communications, Inc. and Bruce Yuille)
for breach of the approved Interconnection) Case No. U-16501
Agreement Between AT&T Michigan and)
B&S Telecom, Inc.)
_____)

DEFENDANT BRUCE YUILLE'S MOTION
FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) and (10) AS TO ALL
ALLEGATIONS CHARGING THAT HE COMMITTED FRAUD

1. This motion is made under authority of Commission Rule 323 and MCR 2.116(C)(8) and (10).
2. AT&T's March 3, 2011 updated response to Request to Admit no. 2, (docket no. 45) copy attached to the brief in support of this motion.
3. Such update establishes that there are no genuine issues of material fact relevant to this motion and that Bruce Yuille is entitled to a judgment in his favor as a matter of law, and that the complaint fails to state a cause of action for which relief can be granted.
4. The complaint fails to comply with the pleading requirements of MCR 2.112 as to fraud.

WHEREFORE, Defendant Bruce Yuille moves for entry of judgment of dismissal of all allegations made in the complaint that charge that Bruce Yuille or Quick Communications, Inc. committed fraud against AT&T in this matter.

Respectfully submitted March 14, 2011

/S/ Bruce H. Yuille
Bruce H. Yuille, Esq.
Attorney for all Defendants
5850 Dixie Highway
Clarkston, MI 48346
byuille@800goquick.com
(248) 623-9500

SUPPORTING BRIEF

I STATEMENT OF FACTS

MCR 2.112(B) requires that the circumstances constituting fraud must be stated with particularity:

(B) Fraud, Mistake, or Condition of Mind.

(1) In allegations of fraud or mistake, **the circumstances constituting** fraud or mistake **must be stated with particularity** (Emphasis supplied).

The complaint charges that Bruce Yuille committed fraud in paragraphs 9 and 27 of the complaint, to wit:

9. B&S and Quick are the alter egos and mere instrumentalities of Bruce Yuille. The respondents have failed to maintain corporate form and have used or acted in concert with each other to siphon corporate assets from B&S, to perpetrate a fraud on AT&T Michigan and the public,

27. AT&T Michigan believes that B&S transferred its resale customer accounts to Quick for an amount less than the fair market value of the accounts, and without the prior consent of the end-users, in order to frustrate collection by AT&T Michigan of amounts owed to by B&S to AT&T under the B&S ICA and to otherwise perpetrate a fraud on AT&T Michigan.

On March 3, 2011, AT&T filed Supplemental Responses to Request to Admit no. 2 as follows:

Request to Admit No. 2

Please admit that Bruce H. Yuille has not made any representations of material fact that were false when made with the intent that AT&T rely on same and upon which AT&T reasonably relied.

RESPONSE:

AT&T objects to this request as unduly burdensome for the reason that it is not limited as to time or subject matter.

SUPPLEMENTAL RESPONSE:

Admitted that Bruce H. Yuille did not personally make any representations of material fact with respect to the subject matter of the complaint in this matter that were false when

made with the intent that AT&T rely on same and upon which AT&T relied (Emphasis Supplied).

II RULES THAT APPLY TO SUMMARY DISPOSITION

Commission Rule 323 reads:

R 460.17323 Summary disposition.

Rule 323. - A party may make a motion for summary disposition of all or part of a proceeding. If the presiding officer determines that there is no genuine issue of material fact or that there has been a failure to state a claim for which relief can be granted, the presiding officer may recommend, to the commission, summary disposition of all or part of the proceeding. If the entire proceeding is disposed of, the presiding officer shall issue a proposal for decision. If only part of a proceeding is disposed of, the presiding officer may issue a partial proposal for decision.

MCR 2.116 (B) reads:

(B) Motion.

(1) A party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule for summary disposition of the defense. A request for dismissal without prejudice under [MCL 600.2912c](#) must be made by motion under MCR 2.116 and [MCR 2.119](#).

(8) The opposing party has failed to state a claim on which relief can be granted.

(9) The opposing party has failed to state a valid defense to the claim asserted against him or her.

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

(4) The grounds listed in sub-rules (C)(8), (9), and (10) may be raised at any time,

III ELEMENTS OF FRAUD

M Civ JI 128.01 sets forth six long standing elements that a plaintiff is required to prove to establish fraud based upon an alleged false representation:

Plaintiff claims that defendant defrauded [**him / her / it**]. To establish fraud, plaintiff has the burden of proving each of the following elements by clear and convincing evidence:

- a. Defendant made a representation of [**a material fact/material facts**].
- b. The representation was false when it was made.
- c. Defendant knew the representation was false when [**he/she/it**] made it, or defendant made it recklessly, that is, without knowing whether it was true.
- d. Defendant made the representation with the intent that plaintiff rely on it.
- e. Plaintiff relied on the representation.
- f. Plaintiff was damaged as a result of [**his/her/its**] reliance.

(See also *Kassab v Michigan Basic Property Insurance Association*, 441 Mich 433; 491 NW2d 545 (1992), reh den 441 Mich 1202; 491 NW2d 829 (1992), overruled in part in *Haynes v Neshewat*, 477 Mich 29 (2007))

IV ARGUMENT

AT&T's Supplemental response to Bruce Yuille's Request to Admit no. 2 conclusively establishes, by admission, that there was/is no factual basis for the allegations in the complaint that Bruce Yuille committed fraud.

In addition, the particular circumstances required by MCR 2.112 to plead fraud against Quick Communications, Inc., are absent.

V CONCLUSION

The subject motion should be granted.

Respectfully submitted March 14, 2011

/S/ Bruce H. Yuille
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March 3, 2011

Via E-Docket

Ms. Mary Jo. Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Re: In the matter of the formal complaint of Michigan Bell Telephone Company d/b/a AT&T Michigan against B&S Telecom, Inc., Quick Communications, Inc. and Bruce Yuille for breach of the approved Interconnection Agreement Between AT&T Michigan and B&S Telecom, Inc. Case No. U-16501

Dear Ms. Kunkle:

Enclosed for filing in the above-captioned case is a *Proof of Service of AT&T Michigan's Supplemental Responses to Respondents' Requests for Admission and Interrogatories*.

If you have any questions, please contact me.

Very truly yours,

William J. Champion III

Enclosures
WJC/jmm

C o u n s e l o r s A t L a w

DETROIT NASHVILLE WASHINGTON, D.C. TORONTO PHOENIX
BLOOMFIELD HILLS ANN ARBOR LANSING GRAND RAPIDS

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Inc., Quick Communications, Inc. and) Case No. U-16501
Bruce Yuille for breach of the approved)
Interconnection Agreement Between)
AT&T Michigan and B&S Telecom, Inc.)
_____)

AT&T MICHIGAN'S SUPPLEMENTAL RESPONSES TO RESPONDENTS'
REQUESTS FOR ADMISSION AND INTERROGATORIES

In accordance with the Administrative Law Judge's February 14, 2011 order, AT&T Michigan hereby supplements its responses to Respondents' January 3, 2011 discovery requests as follows:

MPSC Case No. U-16501
To: AT&T Michigan
From: B&S Telecom and Quick Communications
Date: 1-3-2011
SUPPLEMENTAL

Request to Admit No. 2

Please admit that Bruce H. Yuille has not made any representations of material fact that were false when made with the intent that AT&T rely on same and upon which AT&T reasonably relied.

RESPONSE:

AT&T objects to this request as unduly burdensome for the reason that it is not limited as to time or subject matter.

SUPPLEMENTAL RESPONSE:

Admitted that Bruce H. Yuille did not personally make any representations of material fact with respect to the subject matter of the complaint in this matter that were false when made with the intent that AT&T rely on same and upon which AT&T relied.

Respectfully submitted,

DICKINSON WRIGHT PLLC

By: _____
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Dated: March 3, 2011

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B&S Telecom, Inc.)

Case No. U-16501

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF WASHTENAW)

Jeanette M. Munro, being first duly sworn, deposes and says she is employed at Dickinson Wright PLLC, and that on March 3, 2011, she caused a copy of the AT&T Michigan's Supplemental Responses to Respondents' Requests for Admission and Interrogatories and this Proof of Service, to be delivered to the parties listed on the attached service list by email.

Jeanette M. Munro

Subscribed and sworn to before me
this 3rd day of March, 2011.

Jacqueline K. Tinney, Notary Public
Wayne County, Michigan
Acting in Washtenaw County, Michigan
My Commission Expires: 7/17/12

SERVICE LIST

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(Proof of Service Only)

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