

SUPERIOR COURT BERGEN COUNTY

FILED

JUN 14 2001

*Jim Goodwin*  
DEPUTY CLERK

RAMP & PISANI, LLP  
60 Westervelt Avenue  
PO Box 249  
Tenafly, New Jersey 07670  
(201)-567-8877  
Attorneys for Plaintiff

TWEEL HOME FURNISHINGS, INC.

Plaintiff

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: BERGEN COUNTY

Docket Number: *BER L-4995-01*

-v-

CIVIL ACTION

ALLEGIANCE TELECOM, INC.,  
ALLEGIANCE TELECOM OF  
NEW JERSEY, RON CABRAL,  
individually, and PETER SIMCHERA,  
individually

COMPLAINT

Defendants

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

Plaintiff, Wehl & Tweel, d/b/a Tweel Home Furnishings with offices located at 900 Passaic Avenue, Harrison, New Jersey, by way of complaint against the defendants say:

1.) Plaintiff, Wehl & Tweel, d/b/a Tweel Home Furnishings (hereinafter referred to as "Tweel"), is a wholesale manufacturer and importer of table linens and kitchen textiles. This company sells its products to the trade companies who, in turn, sell to the public. Some of the plaintiff's customers include Bed, Bath & Beyond, Linens-N-Things, Burlington Coat Factory, and Consolidated Stores.

2.) Defendants, Allegiance Telecom, Inc./Allegiance Telecom of New Jersey (hereinafter referred to as "Allegiance"), is a telecommunication company which, among other

things, provides local telephone service to customers. It has its main office located at 201 Route 17 North, 10th Floor, Rutherford, New Jersey 07070.

3.) The trade community who purchase and contract with the plaintiff for its products mainly contact the plaintiff by calling them at a phone number that they have had for a long period of time. Their phone number is (973)-481-6300. This is the main phone line to contact the plaintiff and is plaintiff's lifeline for its business. This phone number is listed as plaintiff's phone number in all the phone books, on its letterhead, on its business cards, and in the trade magazines. Without this line in constant operation, plaintiff cannot function as a business. Prior to April 13, 2001, this telephone number and local telephone line was serviced and provided to the plaintiff by Verizon.

4.) On April 13, 2001, plaintiff noticed it had no local telephone line service. If they called their phone number, a recorded message stated that the phone number had been disconnected. Plaintiff's representatives contacted Verizon. They also contacted Verizon's repair department. Plaintiff was told that there was trouble with the line and a service technician would be dispatched by 2:00 p.m. to resolve the problem. At approximately 4:00 p.m., Verizon's representative had not arrived. Plaintiff's representative called Verizon again and was told that the order was cancelled because plaintiff was no longer a Verizon customer. Verizon also told plaintiff that plaintiff's local telephone provider was switched to Allegiance. Plaintiff was shocked to hear this information since the two people who could authorize any type of switch in plaintiff's local telephone service had not authorized, consent to, or knew that there was a switch in service.

5.) Plaintiff called Allegiance's customer care department at 1-800-553-1989 and was told by Allegiance's representative that plaintiff was not an Allegiance customer. Next,

plaintiff contacted Allegiance's sales department and was told that an alleged contract to switch plaintiff's local telephone service provider from Verizon to Allegiance was signed by Carol Mendoza, plaintiff's bookkeeper at the time. Following a very expedited investigation, plaintiff discovered that defendant, Ron Cabral, a salesman for Allegiance, came to plaintiff's office on or about March 16th seeking to solicit from plaintiff a change in their local telephone provider. Joseph Missry met him and told him that plaintiff was not interested in switching local telephone providers. After Mr. Missry left, Mr. Cabral came back and misrepresented to Carol Mendoza that he could help her get a personal credit card for her personal use if she signed certain documents including an application. Mr. Cabral provided her with a variety of documents which she signed without first reading them or reviewing them with any of the principals of the plaintiff. Mr. Cabral left without leaving a copy of the papers that Ms. Mendoza had signed.

6.) Based on information and belief, Ms. Mendoza signed an authorization for Allegiance to switch and transfer to them plaintiff's local telephone service. Plaintiff's phone line had improperly and illegally been slammed by Allegiance.

7.) After Allegiance illegally slammed plaintiff's local phone lines, it failed to connect plaintiff so that its main telephone would operate. Not only was plaintiff left without any local telephone service, its fax line and EDI line also were out and not working.

8.) Between April 16, 2001 and April 23, 2001, plaintiff's representatives made numerous attempts with Allegiance to have their local phone line connected so that their phone number would be operational. They spoke with Allegiance at least four to five times per day trying to get plaintiff's main phone line re-established and re-connected. Allegiance has blamed the problem on Verizon. Verizon claims that, since the lines were assigned and transferred to

defendant Allegiance, they could do nothing about immediately re-connecting the line to provide plaintiff with immediate local telephone service. Allegiance claimed that Verizon never transferred the line to them and, therefore, they could not provide plaintiff with local telephone provider service.

9.) On Thursday, April 19, 2001, plaintiff's representatives actually went to Allegiance's local sales office located in East Rutherford, NJ. They met with defendant, Peter Simchera, Allegiance's sales manager, and explained the problem to him. Defendant Simchera claimed and represented that there was nothing that they could do because Verizon allegedly did not transfer the line and, therefore, would take no action on plaintiff's behalf. Defendant Simchera made the statements knowing them to be untrue. he was aware that Cabral had slammed plaintiff's phone line.

10.) Thereafter, plaintiff contacted Verizon's WinBack Department. Plaintiff was told that Verizon could not bring plaintiff back to Verizon until Allegiance acknowledged that plaintiff was their customer. Even if Allegiance did, it would take five to thirty business days to have plaintiff's service switched back to Verizon because of FCC procedures.

11.) On Friday, April 20, 2001, after four (4) days of no service, plaintiff was reassured by Allegiance that plaintiff's phone service would be on by 5:00 p.m. Friday. As of Tuesday, April 24, 2001, plaintiff still had no local telephone service. Plaintiff had none for eight (8) consecutive days.

12.) On Friday afternoon, April 20, 2001, Allegiance's corporate headquarters was contacted. They acknowledged that there was a file that had been opened on plaintiff's case under file #642-114. They further represented that a technician had been dispatched to correct

the problem. As of the end of business on Friday, no technician from defendant Allegiance had come to plaintiff's business operation to check the problem.

13.) Plaintiff did not had local telephone service now for over eight (8) days. These local telephone lines are the life blood of plaintiff's business. When one of plaintiff's customers calls the main telephone number, they receive a message that states that plaintiff's lines have been disconnected. Plaintiff's customers contacted plaintiff via e-mail and cell phone numbers to inquire whether they have gone out of business. Others have driven by plaintiff's office to see if they were still in business. Plaintiff has an office staff of eight (8), all of whom have been unable to accomplish any work because the phone service is down. Plaintiff has a factory of fifty (50) employees which has been severely slowed by not being able to receive any orders.

Plaintiff finished its market week, April 6th, and none of plaintiff's customers and potential new customers could reach plaintiff. Plaintiff was on the verge of potentially losing a whole season worth of business because they had no local telephone service.

Verizon was able to provide them with local telephone service again on or about April 25, 2001.

FIRST COUNT  
(NEW JERSEY CONSUMER FRAUD ACT)

1.) In engaging in the above conduct, defendants, Allegiance Telecom, Allegiance Telecom of New Jersey, Ron Cabral, and Peter Shimchera, have committed an unconscionable commercial practice, deception, fraud, falsity, and misrepresentation in connection with the slamming of plaintiff's local telephone lines.

2.) These defendants knew that plaintiff had no interest in switching its local telephone provider service to them yet, defendants, fraudulently induced plaintiff's bookkeeper to sign

the authorization contract by falsely representing to her that she could receive a personal credit card if she signed certain papers. Defendants knew that she was not signing any papers for an application for a personal credit card but was, in fact, signing and authorizing the assignment and transfer of plaintiff's local telephone provider service to defendant Allegiance.

3.) The fraud continued when defendants represented to plaintiff that there was nothing Allegiance could do because they claimed Verizon had not transferred the telephone lines and it was Verizon's problem even though they knew at the time that they had slammed plaintiff's phone lines and had fraudulently induced plaintiff to transfer its local phone service to them and that they, in fact, had been transferred by Verizon.

4.) Plaintiff has continually requested that these defendants provide them with immediate local telephone service so that it can operate its business, however, defendants continued to refuse to engage in providing plaintiff with the local telephone service even though they fraudulently induced the plaintiff into transferring the lines to them in the first place.

5.) As a result of defendant's conduct, plaintiff has suffered damages.

6.) Based on the foregoing, these defendants have violated the New Jersey Consumer Fraud Act (N.J.S.A. 56:8-1, et seq.).

WHEREFORE, plaintiff requests judgment against defendants, Allegiance Telecom, Inc., Allegiance Telecom of New Jersey, Ron Cabral, individually, and Peter Simchera, individually, jointly and severally, as follows:

A.) Compensatory damages.

B.) Treble damages.

C.) Reasonable attorney fees, filing fees, and costs of suit.

D.) Any further relief that the court may deem just and proper.

SECOND COUNT  
(COMMON LAW FRAUD)

1.) Plaintiff realleges the allegations contained in the First Count as if same were set forth at length herein.

2.) By acts outlined above, these defendants have perpetrated common law fraud against the plaintiff.

WHEREFORE, plaintiff request judgment against defendants, Allegiance Telecom, Inc., Allegiance Telecom of New Jersey, Ron Cabral, individually, and Peter Simchera, individually, jointly and severally, for the following:

- A.) Compensatory damages.
- B.) Punitive damages.
- C.) Reasonable attorney fees, filing fees, and costs of suit.
- D.) Any further relief that the court may deem just and proper.

THIRD COUNT

1.) Plaintiff realleges each and every allegation contained in the First and Second Counts as if same were set forth at length herein.

2.) Any alleged contract authorizing the assignment and transfer of the plaintiff's telephone lines to defendant is void and unenforceable because Carol Mendoza did not have actual, apparent, or any authority to bind plaintiff.

WHEREFORE, plaintiff request judgment against defendants, Allegiance Telecom, Inc., Allegiance Telecom of New Jersey, Ron Cabral, individually, and Peter Simchera, individually, jointly and severally, for the following:

- A.) Compensatory damages.
- B.) Reasonable attorney fees, filing fees, and costs of suit.
- C.) Any further relief that the court may deem just and proper.

#### FOURTH COUNT

1.) Plaintiff realleges each and every allegation contained in the First, Second, and Third Counts as if same were set forth at length herein.

2.) Defendants, Allegiance Telecom, Inc. and Allegiance Telecom of New Jersey, were negligent in being unable to provide plaintiff with local telephone service since April 16, 2001, after the phone lines were transferred by defendant, Verizon. As a result of the defendants' negligence, the plaintiff has been damaged.

WHEREFORE, plaintiff requests judgment against defendants, Allegiance Telecom, Inc. and Allegiance Telecom of New Jersey, as follows:

- A.) Compensatory damages.
- B.) Reasonable attorney fees, filing fees, and costs of suit.

#### FIFTH COUNT

1.) Plaintiff realleges each and every count of the First, Second, Third, and Fourth Counts as if same were set forth at length herein.

2.) Defendants, Allegiance Telecom, Inc., Allegiance Telecom of New Jersey, and Verizon Communications, Verizon New Jersey are in breach of their contractual obligations to plaintiff to provide local telephone service. As a result of defendants' breach of contract, plaintiff has been damaged.



WHEREFORE, plaintiff requests judgment against the defendants, Allegiance Telecom, Inc., Allegiance Telecom of New Jersey, and Verizon Communications, and Verizon of New Jersey, jointly and severally, as follows:

A.) Compensatory damages.

B.) Reasonable attorney fees, filing fees, and costs of suit.

JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Please take notice that pursuant to R. 4:25-4, Fred J. Pisani, Esq., is designated as trial counsel for the within matter.

CERTIFICATION

I certify that the matter in controversy is not the subject matter of any other action pending in any court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I certify that no other parties should be joined in this action. R.4:5-1.

I certify that the foregoing statements made by me are true. I am aware that if nay of the foregoing statements made by me are willfully false, I am subject to punishment.

RAMP & PISANI, LLP  
Attorneys for Plaintiff

Date:

6/13/01

By:

  
FRED J. PISANI, ESQ.



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial Law Division - Civil Part pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-5(c), if information above the black bar is not completed or if attorney's signature is not affixed.

FOR USE BY CLERK'S OFFICE ONLY

PAYMENT TYPE:	<input checked="" type="checkbox"/> CK	<input type="checkbox"/> CG	<input type="checkbox"/> CA
CHK / CK NO.			
AMOUNT:			
OVERPAYMENT:			
BATCH NUMBER:			

ATTORNEY / PRO SE NAME Fred J. Pisani, Esq.	TELEPHONE NUMBER (201 )-567-8877	COUNTY OF VENUE Bergen
FIRM NAME (if applicable) Ramp & Pisani, LLP	DOCKET NUMBER (When available)	
OFFICE ADDRESS 60 Westervelt Avenue, PO Box 249 Tenafly, New Jersey 07670	DOCUMENT TYPE Complaint and jury demand	
NAME OF PARTY (e.g. John Doe, Plaintiff) Tweel Home Furnishings, Inc. plaintiff	CAPTION Tweel Home Furnishings, Inc. v. Allegiance Telecom, Inc., Allegiance Telecom of New Jersey, Ron Cabral, individually, and Peter Simchera, individually	
CASE TYPE NUMBER (Only relevant to for Esting) 699	NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN	
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, LIST DOCKET NUMBERS	
DO YOU ANTICIPATE ADDING ANY PARTIES (listing out of some direction of occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP?  YES  NO

IF YES, IS THAT RELATIONSHIP:  EMPLOYER-EMPLOYEE  FRIEND/NEIGHBOR  OTHER (explain) \_\_\_\_\_  
 FAMILIAL  BUSINESS

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY?  YES  NO

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION:

DO YOU OR YOUR CLIENT HAVE ANY NEEDS UNDER THE AMERICANS WITH DISABILITIES ACT?  YES  NO IF YES, PLEASE IDENTIFY: \_\_\_\_\_

WILL AN INTERPRETER BE NEEDED?  YES  NO IF YES, FOR WHAT LANGUAGE: \_\_\_\_\_

ATTORNEY SIGNATURE