

Dillon v U-A Columbia Cablevision of Westchester

100 N.Y.2d 525, 790 N.E.2d 1155, 760 N.Y.S.2d 726 (2003)

New York Court of Appeals · May 1, 2003

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[100 NY2d 526] OPINION OF THE COURT

Memorandum.

The order of the Appellate Division should be affirmed, with costs.

Plaintiff, a customer of defendant cable television company, commenced this purported class action for compensatory and punitive damages challenging the \$5 late fee she paid to defendant for her late payments. The complaint alleges that, although defendant in its promotional materials characterized the late fee as an administrative fee intended to be a reasonable estimate of its costs resulting from customers' late payments and nonpayments, it was an unlawful penalty bearing no relation to defendant's actual costs incurred in servicing such payments, and plaintiff would not have paid the fee had she known the true facts. Supreme Court granted defendant's motion to dismiss the complaint, and the Appellate Division affirmed.

We agree with both lower courts that the voluntary payment doctrine bars plaintiff's complaint. That common-law doctrine bars recovery of payments voluntarily made with full knowledge of the facts, and in the absence of fraud or mistake of material fact or law (see *Gimbel Bros. v Brook Shopping Ctrs.*, 118 AD2d 532, 535-536 [1986]). Here, no fraud or mistake is alleged in that, according to the complaint, plaintiff knew she would be charged a \$5 late fee if she did not make timely payment. Alleged mischaracterization of a \$5 late fee as an administrative fee does not overcome application of the voluntary payment doctrine.

Chief Judge Kaye and Judges Smith, Ciparick, Wesley, Rosenblatt, Graffeo and Read concur.

Order affirmed, with costs, in a memorandum.