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LAW OFFICE OF
GIBSON & YOUTZ

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SANDY JUDD, TARA HERIVEL)
and ZURAYA WRIGHT, for themselves,)
and on behalf of all similarly situated)
persons,)

No. 47811-7-1

Respondents,)

COMMISSIONER'S RULING
DISMISSING APPEAL

v.)

AMERICAN TELEPHONE AND TELEGRAPH)
COMPANY, GTE NORTHWEST, INC.,)
CENTURYTEL TELEPHONE UTILITIES, INC.,)
NORTHWEST TELECOMMUNICATIONS,)
INC., d/b/a PTI COMMUNICATIONS, INC.,)
U.S. WEST COMMUNICATIONS, INC.,)

Defendants,)

T-NETIX, INC.,)

Appellant.)

Sandy Judd and two other named plaintiffs (Judd) filed suit against T-Netix, Inc., American Telephone and Telegraph Company (AT&T), GTE Northwest, Inc., Centurytel Telephone Utilities, Inc., Northwest Communications, Inc. d/b/a PTI Communications (PTI) and U.S. West Communications, Inc. (Qwest). Judd asserted that the companies had contracts with the Washington State Department of Corrections to provide services on payphones used by state prison inmates. According to the complaint, prison inmates are required to use the companies' services and may only make collect calls. Judd asserted that the named companies failed to appropriately disclose their rates to recipients of these calls, in violation of RCW 80.36.520 and the Consumer Protection

Act. Judd, a recipients of such calls, filed the case as a potential class action and has now moved to certify a class.

The defendants moved for summary judgment of dismissal. The Honorable J. Kathleen Learned granted the motion in part and denied it in part. Judge Learned ruled:

There is some ambiguity in the literal wording of the statute in question. However, reading the statute as a whole, the legislature intended to create a cause of action under the Washington Consumer Protection Act ("CPA") only for violations of the regulations promulgated by the Washington Utilities and Transportation Commissioner ("WUTC") and did not create a cause of action for actions beyond or outside the regulations.¹

Judge Learned concluded that the defendants would be dismissed unless the plaintiffs filed supplemental pleadings alleging that the defendants violated WUTC regulations. After supplemental briefing, Judge Learned entered the following ruling on T-Netix's motion to dismiss:

IT IS HEREBY ORDERED that Defendant T-Netix' Motion is granted in part only and the matter is referred to the Washington Utilities and Transportation Commission (WUTC) for further proceedings to determine if T-Netix has violated WUTC regulations. CPA claims and any award of monetary damages are stayed pending WUTC action. Further, T-Netix's motion to dismiss claims related to interstate claims are dismissed under federal pre-emption. Class action issues are stayed pending WUTC action.²

T-Netix filed a notice of appeal. This Court set a motion to determine appealability. T-Netix asserts that this case is properly appealable. Judd asserts that it is not. T-Netix has not filed a motion for discretionary review nor has it argued that the trial court's decision constitutes obvious or probable error as required by RAP 2.3(b).

¹ Appendix 2 to T-Netix Response to Court's Motion

² Appendix 3 to T-Netix Response to Court's Motion

T-Netix contends that this case is appealable under various federal doctrines, none of which are applicable here. T-Netix asserts that the trial court's decision is final and complete and closed because the trial court has passed Judd's claim to the WUTC in its entirety. That does not seem to be the case. The superior court has deferred to the WUTC for a declaration as to whether T-Netix has violated any specific WUTC rules. But the court has retained the CPA case and specifically stayed the issue of class certification. In short, the trial court has deferred to the agency with the appropriate expertise to determine if its own rules have been violated. Based upon the WUTC declaration, the trial court is apparently ready to proceed with rulings on summary judgment and/or class certification and the CPA trial, whichever is appropriate.

T-Netix also claims that the dispute is appealable because the issue it wishes to raise is collateral to the main issue and thus comes within the collateral order doctrine of the federal courts. First, there is no merit to T-Netix' claim that this court has adopted the collateral order doctrine. The case to which T-Netix refers merely quotes the holding of a federal case that referred to the collateral order doctrine. But that case did not involve an appeal of a collateral order and the court had no occasion to determine its applicability to Washington state procedure. A number of states have rejected the doctrine as inapplicable to state procedure. See Walden v. City of Seattle, 77 Wn. App. 784, 789, 892 P.2d 745 (1995)(federal rule permitting immediate appeal of ruling denying qualified immunity is not applicable to state proceeding; our discretionary review procedure provides adequate opportunity for immediate review).

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the main issue in the case. That Judd disagrees with the trial court's ruling which limits her ability to pursue the CPA claim does not suggest that the question of whether T-Netix has violated WUTC regulation is collateral. Judd has also responded to the court's motion and has argued that the matter is not appealable.

There is no basis for finding that T-Netix is entitled to appeal the trial court's order. Moreover, there is a strong policy in Washington against piecemeal appeals. Fox v. Sunmaster Prods., Inc., 115 Wn.2d 498, 503-04, 798 P.2d 808 (1990); Doerflinger v. New York Life Ins. Co., 88 Wn.2d 878, 882, 567 P.2d 230 (1977). T-Netix has not overcome the presumption that an appeal does not lie from an interlocutory order.

T-Netix has not filed a motion for discretionary review nor requested time to file such a motion. As this case is not properly before this court, the appeal is dismissed.

Now, therefore, it is hereby

ORDERED that the appeal is dismissed.

Done this 5th day of February, 2001.


Court Commissioner

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