

**CITATION:** Mitel Networks Corporation v. Division Integral de Telefonía S.A. DE CV, 2025  
ONCS 4142  
**COURT FILE NO.:** 17-73340  
**DATE:** 2025/07/11

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Mitel Networks Corporation et al, Plaintiffs

**-and-**

Division Integral de Telefonía, S.A. DE CV, Defendant

**BEFORE:** Anne London-Weinstein J.

**COUNSEL:** Todd Burke for the Plaintiffs

Defendant, Noted in Default

**HEARD:** In Writing

**ENDORSEMENT**

[1] The Plaintiffs, Mitel Networks Corporation and Mitel Networks, Inc. (collectively, “Mitel”), seek a declaration that the Defendant, Division Integral de Telefonía S.A. de C.V. (“Divitel”), breached the Mitel Platinum Distribution Agreement (the “Agreement”) and an order for the preservation and return of all products. Mitel claims \$1,607,707.32 (\$1,174,966.98 USD) as judgment against Divitel who has been noted in default.

[2] This motion was originally argued before me in December of 2024.

[3] On January 30, 2025, I ruled that the affidavit outlining the information and belief of counsel was insufficient to permit the court to grant default judgment within the context of this particular claim. Rather than dismissing the claim, the court invited the submission of an affidavit from an appropriate representative of Mitel who could attest to the breach of the Agreement, the partial amounts paid and the amounts outstanding, along with details of any property to be recovered as set out in the Statement of Claim and any other facts supporting the claim. (See the court’s related endorsement dated January 30, 2025.)

[4] On June 13, 2025, the court received the affidavit of Gregory Hiscock, the secretary of Mitel. Mr. Hiscock attested to the following:

- a. Mitel Networks Corporation and Mitel Networks Inc. are affiliated companies. Mitel Networks Corporation is a direct wholly owned subsidiary of Mitel Networks (International) Limited (UK) and Mitel Networks Inc. is an indirect wholly owned subsidiary of Mitel Networks (International) Limited (UK). Mitel Networks Corporation has its head office in Kanata, Ontario while Mitel Networks Inc., has its head office in Mesa, Arizona, United States of America.
- b. Divitel is a corporation carrying on business in Mexico City, Mexico as a distributor of telecommunications products and services.
- c. On May 1, 2005, Mitel and Divitel entered into the Agreement for the purchase of certain Mitel products for distribution throughout Mexico.
- d. On October 30, 2006, Mitel and Divitel entered into a Service Solutions Addendum to the Agreement for the use of Mitel Network Service Solutions.
- e. On December 18, 2006, Mitel and Divitel signed the amendment to the Agreement with an effective date of May 1, 2005.
- f. The Agreement stipulates that the invoices sent to Divitel were due and payable within 60 days after shipment of the product. Overdue accounts were subject to an interest charge of 24 per cent per annum.
- g. The Agreement granted Mitel a security interest in all Mitel products and proceeds of sale for which Mitel has not been paid.
- h. In or around 2013 and 2014, Mitel supplied products and services to Divitel pursuant to the Agreement. Divitel accepted the products and services, and Mitel issued a total of 17 invoices to Divitel, totalling \$1,205,517.37 USD for payment.
- i. Divitel made partial payments to Mitel, leaving a balance owing of \$1,174,966.98 USD.

- j. Divitel did not make timely or sufficient payments upon being provided Mitel invoices. On November 22, 2013, in response to receipt of the invoices, Divitel made one payment, in the amount of \$278.56 USD, and another payment on May 13, 2015, in the amount of \$2,500 USD.
- k. On or about June 19, 2015, John Abbott, Mitel's Vice President of Global Credit, contacted Mr. Javier Rojas of Divitel to discuss the outstanding balance that remained due and owing to Mitel.
- l. On or about August 25, 2015, Chuck Krogman, Mitel's Vice President of Caribbean and Latin America, contacted Mr. Rojas to discuss a payment plan to repay the full outstanding balance owing to Mitel by December 2015. Mr. Rojas committed to this repayment plan.
- m. On or about December 10, 2015, Mr. Rojas wrote to Mr. Krogman and acknowledged that the debt remained due and owing to Mitel. Mr. Rojas proposed that \$187,000 USD would be paid to Mitel by Divitel by December 31, 2015, and an additional \$200,000 USD would be paid to Mitel by January 31, 2016.
- n. However, no payments were made in either December 2015 or January 2016.
- o. On or about March 10, 2016, Christina Kelly, Mitel's Account Representative in Collections, contacted Mr. Rojas to discuss the breach of the payment plan and requested to discuss the outstanding balance.
- p. On or about March 28, 2016, Mr. Rojas committed to Divitel making a payment of \$185,000 USD within 60 days.
- q. In or around April and May of 2015, Divitel made some payments. The payments totalled \$12,684.96 USD rather than the \$185,000 USD which had been committed to as part of the repayment plan.
- r. On or about July 11, 2016, Mitel notified Mr. Rojas that \$1,189,966.98 USD remained due and owing and requested payment within 10 days.

- s. On or about September 21, 2016, Mitel sent further correspondence to Mr. Rojas that \$1,189,966.98 USD remained due and owing and requested payment within 10 days.
- t. On or about February 23, 2017, Mr. Rojas again acknowledged the debt with Mitel and proposed another payment plan wherein \$20,000 USD would be remitted by March 31, 2017.
- u. On or about March 16, 2017, Divitel sent payment in the amount of \$15,000 USD to Mitel rather than the \$20,000 USD which was agreed upon in accordance with the payment plan.
- v. Mitel did not receive any further payments from Divitel after March 16, 2017. The balance of \$1,174,966.98 USD remains outstanding.

[5] Due to the nonpayment of the outstanding amounts by Divitel, Mitel seeks a vested security interest in the amount of \$1,607,707.32 (\$1,174,966.98 USD) in all Mitel products either now possessed by Divitel or acquired by Divitel, proceeds of sale of Mitel products and the proceeds of any applicable insurance coverage in relation to Mitel products pursuant to the Service Solutions Addendum.

[6] Mitel also seeks interest in the amount of 24 per cent per annum totalling \$3,165,116.69 USD in accordance with the terms of the Service Solutions Addendum.

[7] Mitel also seeks costs and disbursements in the amount of \$152,851.72 for the motion and the action.

**Legal Analysis:**

***History of the Action:***

[8] This action was commenced on July 17, 2017 by Mitel. Mitel had to jump through a great number of legal hoops in order to effect service upon Divitel pursuant to the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*,

15 November 1965, 658 U.N.T.S. 163, Can. T.S. 1989 No. 2 (“*Hague Service Convention*”). Both Canada and Mexico are contracting states to the *Hague Service Convention*.

[9] Mitel retained the services of a Mexican law firm to provide assistance with service of process pursuant to the *Hague Service Convention*.

[10] The Central Authority in Mexico requested that Mitel obtain a Letter Rogatory of the Ontario Superior Court of Justice for the service of the Statement of Claim pursuant to the *Hague Service Convention*.

[11] On March 27, 2018, Gomery J. (as she then was) signed a Letter Rogatory to the Mexican Central Authority, the Ministry of Foreign Affairs, which was issued to the Mexican Central Authority, the Ministry of Foreign Affairs.

[12] Mitel made several unsuccessful attempts to serve the Statement of Claim on Divitel at various locations which were linked to Divitel.

[13] The Mexican authorities were unable to effect service by alternate means, i.e. service of the Statement of Claim by publishing the claim in Mexican newspapers because alternative methods of service were not contemplated in the Letter Rogatory, dated March 27, 2018.

[14] Mitel then had to obtain a new Letter Rogatory signed by McNamara J. on June 29, 2021, which stipulated that the Statement of Claim may be served by alternative means, including but not limited to publishing the Statement of Claim or any part thereof in Mexican newspapers, gazettes or any other means pursuant to Mexican law.

[15] The Letter Rogatory was later filed before the Ministry of Foreign Affairs of Mexico on July 9, 2021, and was then recorded by the Fifty-Third Civil Court in Mexico.

[16] The Fifty-Third Civil Court ordered that service of the Statement of Claim would be effected by means of publishing a litigation notice in two Mexican newspapers. The litigation notices were published on November 3, 4 and 7, 2022 in the newspapers called *Diario de Mexico* and *Diario Imagen*.

[17] The Fifty-Third Civil Court also granted Divitel 30 business days to collect copies of the lawsuit and an additional 60 days to respond to the lawsuit.

[18] Divitel's deadline to collect copies of the lawsuit expired on January 12, 2023.

[19] Mitel received the duly executed Certificate from the Central Authority confirming service of the Statement of Claim pursuant to the *Hague Service Convention* on October 23, 2023.

[20] Divitel was noted in default on November 27, 2023. To date, Mitel has not received a Statement of Defence and/or been contacted by Divitel regarding this action, despite the Statement of Claim having been serviced pursuant to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and the *Hague Service Convention*.

[21] Given that Divitel has been noted in default, the allegations in the Statement of Claim are deemed to be true as per r. 19.02(1) of the *Rules of Civil Procedure*.

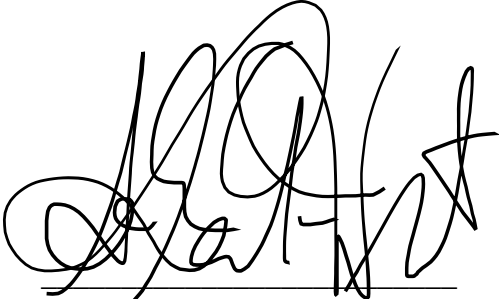
[22] Further, the court finds that service in this case has complied with arts. 1-6 of the *Hague Service Convention*.

[23] Default judgment is therefore granted in favour of Mitel in the amount of \$1,607,707.32 (\$1,174,966.98 USD). The declarations and related orders sought by Mitel in relation to Mitel property have also been made. These are reflected in the court's order issued as of this date.

[24] In regard to costs, the court reviewed the bill of costs in this matter and noted that Mitel was forced to incur significant costs in effecting service on Divitel with the Statement of Claim. International agents in Mexico had to be retained, various corporate searches had to be conducted, and Mitel had to attend two motions for Letters Rogatory. Mitel attended eight motions to extend time for service and had to publish notice of the claim in two Mexican newspapers. After Divitel was noted in default on November 27, 2023, Mitel then had to bring this motion for default judgment. A number of counsel and two law clerks contributed to this file.

[25] Given the degree of complexity of this matter and the difficulty in effecting service in Mexico, the time expended by counsel of varying degrees of experience is appropriate. The costs incurred in this matter are reasonable and appropriate in the circumstances of the case. Total fees

in this matter on a partial indemnity basis total \$45,855.51, inclusive of HST. Total disbursements in this matter total \$72,822.29, inclusive of HST. The court orders that Divitel pay costs on a partial indemnity basis and disbursements in the amount of \$118,677.80, inclusive of HST, to Mitel.



Anne London-Weinstein J.

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**ENDORSEMENT**

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Anne London-Weinstein J.

**Released:** July 11, 2025