

IN THE NORTHAMPTON (CCBC) COUNTY COURT

Claim No: 0QZ38178

B E T W E E N:-

MR ROB JOHNSON

Claimant

-and-

O2 TELEFONICA UK LIMITED

Defendant

DEFENCE

Introduction

1. The Defendant is not properly named on the Claim Form. The Defendant is 'O2 Telefonica UK Limited'.
2. The Claimant entered into a contract with the Defendant on 16th October 2009. The contract was for the supply of, *inter alia*, airtime services and the supply of a mobile telephone. The contract was for 18 months.
3. The contract between the parties is contained within The Consumer & Business Customer Pay terms and conditions ('the terms and conditions') and is appended to this Defence [exhibit 1].
4. Under the terms of the contract between the parties, the Claimant was supplied with a mobile telephone known as 'Palm Pré'. This mobile telephone is 'exclusive' to the Defendant, meaning that it is not marketed or supplied by any other mobile telephone provider.

5. The Claimant refers to the 'unlocking' of a mobile telephone. 'Unlocking' a mobile telephone allows a user to use the mobile telephone on any mobile telephone network, rather than being limited to using it on a single mobile telephone network.

The substantive Defence

3. Paragraph 1 of the Particulars of Claim is admitted.
4. The Defendant is unable to admit or deny the contents of paragraph 2 of the Particulars of Claim. The Claimant is put to strict proof in relation to all allegations made regarding any representations, statements or otherwise made by the Defendant, its servants or agents. Notwithstanding the Claimant's need to prove all allegations made, the Defendant avers that the written terms and conditions form the whole of the contract between the parties and any representations, statements or otherwise made by the Defendant do not constitute terms and/or conditions of the contract between the parties. Further and in the alternative, the Defendant denies any misrepresentation as alleged or at all.
5. Paragraph 3 of the Particulars of Claim is admitted, insofar as it is admitted that the clause 5.9 of the terms and conditions states that *'Where a Handset is restricted to use on the Network we reserve the right to apply a charge for releasing or unlocking the Handset. Details of the charge are available by calling Customer Services'*. It is admitted that the Claimant spoke with Customer Services. The Claimant telephoned Customer Services on 3rd November 2010 and 4th November 2010. The Claimant was informed on both occasions that the mobile telephone could not be unlocked as it was 'exclusive' to the Defendant.
6. Paragraph 4 of the Particulars of Claim is admitted.
7. Paragraph 5 of the Particulars of Claim expresses the Claimant's opinion, to which the Defendant is unable to plead. Notwithstanding this, it is admitted that the

Defendant will not unlock the mobile telephone as it is 'exclusive' to the Defendant.

The Defendant avers the following:

- a. The terms and conditions, including clause 5.9 as set out above, do not impose an obligation on the Defendant to unlock a mobile telephone;
- b. The Defendant advertises the mobile telephone as 'exclusive' to the Defendant in both its printed and online literature;
- c. The Defendant advertises that the mobile telephone will not be unlocked;
- d. The Defendant clearly states on its website [exhibit 2] that the model of mobile telephone owned by the Claimant will not be unlocked so that customers can have *'the very best Smartphone experience'*.

8. Paragraph 6 of the Particulars of Claim is admitted, in that the Defendant admits that the Claimant made such requests.

Remedies

9. The Claimant seeks the following remedies:
 - a. The Defendant unlocks the mobile telephone; or,
 - b. The Defendant provides the Claimant with an unlocked mobile telephone; or,
 - c. The Defendant pays the Claimant the sum of £456.
10. As to 9(a) and (b), the Defendant repeats the contents of paragraph 7 above.
11. As to 9(c), the Defendant avers that the Claimant is not entitled to claim £456 in the event that the Defendant is found liable, which is denied. The Claimant claims £96, being the cost of the mobile telephone, as well as the total amount of money paid per month under the terms of his contract.
12. The Defendant avers that the measure of damages is incorrect. The Defendant relies on clause 3 of the terms and conditions, which states that the duration of the contract is for the 'Minimum Period'. The 'Minimum Period' is defined in clause 14 of the terms and conditions. The duration of the contract between the parties was 18

Exhibit1 is the full contract. This doesn't have much of interest in it, so I didn't bother to scan it.

EXHIBIT 2

You are in [Home](#) [Support](#) [Search Results](#) [Can I unlock my O2 mobile to use it on a different network?](#)

Can I unlock my O2 mobile to use it on a different network?

If you have an O2 iPhone [click here](#)

For Pay Monthly and Pay & Go customers

If you're a Pay Monthly customer then you can request for your handset to be unlocked at any time, free of charge. The only exception are handsets which are exclusive to O2 such as the Palm which remain locked to the O2 network as we want our customers to have the very best Smartphone experience.

Don't forget that you'll still need to honour the remainder of the minimum term of your contract even if you place a non-O2 sim into your phone.

If you're a Pay & Go customer, your O2 mobile can be unlocked 12 months after purchase for a one-off £15 fee which we'll deduct from your airtime balance.

For Business Customers

If you're the main account holder you can request for your devices to be unlocked at any time, free of charge. The only exception are handsets which are exclusive to O2 such as the Palm which remain locked to the O2 network as we want our customers to have the very best Smartphone experience.

Don't forget that you will still need to honour the remainder of the minimum term of your contract even if you place a non-O2 sim into your phone.

To request for your phone to be unlocked, [click here](#) and complete the requested information.

For Business, Pay Monthly or Pay & Go (subject to acceptance) we'll respond via email within 7 days with the details on how to unlock.

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