



MALTA

**In the Consumer Claims Tribunal**

Joseph Osei

vs

Eyad Phone

CCTG6/MS

6th September 2019

The Tribunal,

Having seen plaintiff's claim filed on the 30th April 2018 requesting the sum of €160.00, the price of a mobile phone bought from defendant company, which phone was defective and stopped working within a few days from purchase.

Having seen defendant company's reply refuting plaintiff's claims and insisting that the phone was working perfectly and that any ensuing damage was caused by plaintiff.

Having seen the records of the case and all documents exhibited.

Having heard the evidence under oath.

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That plaintiff contends that he bought a mobile phone from defendant and when he tried inserting the sim card inside the phone, it did not work and nothing switched on. He therefore returned the phone back to defendant and asked him to try to put the card in himself. After this attempt failed, defendant told him that he should take the phone to Melita and ask for a new sim card. Plaintiff took the phone to Melita and was told that the sim card was faulty. He therefore went back to defendant company, explained what had happened and left the phone there for repairs. After two weeks he received a call from defendant company who claimed that the phone had been damaged through plaintiff's initial incorrect insertion of the sim card and that that technician had repaired it as per request. Plaintiff was charged €50.00 for these repairs which he refused to pay since according to him the phone was still under warranty. He therefore left the phone with defendant company. Plaintiff also claims that defendant never gave him a receipt for the phone which he bought for €160.00 and that when he asked for one, defendant made a mistake and indicated that the phone was bought on the 23rd February 2017 whereas in fact the phone was purchased in January 2017. In a subsequent sitting, plaintiff drew the Tribunal's attention to the fact that he had bought the phone in January 2018 and not 2017 as previously stated.



That defendant contends that this is a phone which can also be used as a tablet - i.e. dual function/ purpose and that plaintiff had requested a tablet which also takes a sim-card. Plaintiff bought a phone/tablet and after some time returned back to defendant company claiming that the 3G service was not functioning. Defendant therefore advised him to go to Melita as the internet provider. On their part, Melita advised plaintiff that the mobile had an internal problem and that he should report back to defendant. Defendant therefore kept the phone and sent it to a technician who reported that the phone was damaged from the inside and that this was not covered by guarantee. The repair cost €50.00, which plaintiff refused to pay.

That the technician who worked on the phone, Michael Caruana, also testified in these proceedings, stating that after opening the phone he traced the problem to the internal part of the tablet that receives information and connects the sim to the main board. The sim was broken and the tablet was therefore not able to read the sim card. This type of damage usually occurs when the sim card is inserted incorrectly. Technician immediately informed defendant that the part was broken and that it was not covered by warranty. This information was relayed to plaintiff, who apparently agreed to repair it and the sim reader was changed. After some time defendant company informed the technician that the client refused to pay for the works.

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That from the evidence tendered, it results that the problems with the mobile phone started when the phone was in plaintiff's possession and after he tried to insert a sim card. In his words, "when I put the sim card inside the phone, it does not show anything - nothing switches on." Under cross examination plaintiff contends that he tried to put the sim card in and it didn't work. Although plaintiff insists that the fault was not his, the Tribunal is not satisfied that plaintiff is completely blameless. There is no doubt that plaintiff tried to insert the sim card himself. In fact he testified to this effect. It is also clear that after he tried inserting the sim he decided to take the phone to defendant company. i.e. the phone was not working when it was still in his possession. Plaintiff tries to argue that the damage pre-existed his attempts at inserting the simcard - i.e. that the mobile phone had a latent defect which was extraneous to his attempts at inserting the sim card. However Tribunal can't agree with this argument because there is no evidence to show that the mobile itself was damaged. In fact all signs seem to indicate that the damage occurred after plaintiff tried to insert the sim card, which is plausible given the dual nature of the phone, where it is easy to mistake one portal for another.

It appears that plaintiff agreed to the repair of the phone but refused to pay for the repairs claiming that the phone was under warranty.

However, not every damage sustained by an item is covered by warranty. It is only damage that can be traced to the manufacturer that is so covered. In this case it is obvious that there was nothing wrong with the phone until plaintiff decided to insert a sim card.



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The technician, Michael Caruana, testified to the effect that the mobile was damaged in the part that connects the sim card to the main board. This damage occurs through wrong insertion of sim card which is precisely the reason why the phone was brought in for repair in the first place and corresponds with the Job Sheet dated 12.12.2017 (Can not insert sim card).

The Tribunal therefore feels that plaintiff did not bring sufficient evidence at law for his claim to be acceded to and that he did not prove his case according to law.

For these reasons, the Tribunal is dismissing plaintiff's claim.

With costs.

A handwritten signature in blue ink, appearing to read 'Michela Spiteri'.

Michela Spiteri. Av.  
Arbiter