

IN THE SUMMARY COURT AT GEORGE TOWN

CAUSE NO: OF 2021

B E T W E E N:

SARAH DOBBYN-THOMSON

Plaintiff

AND

DIGICEL CAYMAN LTD

Defendant



PLAINT

To: Digicel Cayman Ltd
c/o International Corporation Services Ltd
PO Box 472, Harbour Place, 2nd Floor, North Wing.
103 South Church Street
George Town, Grand Cayman KY1-1106
CAYMAN ISLANDS

THIS PLAINT has been issued against you by the above-named Plaintiff in respect of the claim set out on the following pages.

Within 14 days after service of this Complaint on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495, Grand Cayman, KY1-1106, Cayman Islands, the accompanying Acknowledgement of Service stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out full particulars of your defence in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or to return the Acknowledgment of Service form containing full particulars of your defence, the Plaintiff may apply for a default judgment without any further notice to you.

Issued this 10th day August 2021

See overleaf for Particulars of the Plaintiff's claim

PARTICULARS OF CLAIM

1. The Plaintiff is and was at all material times an individual customer of the Defendant telecommunications company, with subscriber number 16100288742-1, relating to mobile phone number 1 345 525 2627 (the "**Mobile Phone**"). The Plaintiff's address for service is care of her attorneys, Sinclairs, 3rd Floor Genesis Building, Genesis Close, PO Box 498, Grand Cayman, KY1-1106, Cayman Islands.
2. The Defendant is and was at all material times a telecommunications company, organised and carrying on business under the brand name "*Digicel*" pursuant to the laws of the Cayman Islands. The Defendant was incorporated on 4 June 2003 with registration number 126232. The Defendant's registered office is c/o International Corporation Services Ltd, Harbour Place, 2nd Floor, North Wing, PO Box 472 Cayman Islands, KY1-1106.
3. In reliance on an oral representation by a sales representative in the Defendant's Camana Bay store that the applicable monthly credit limit for a post-paid mobile phone account with the Defendant would be CI\$187.50 and that this would therefore be the maximum amount which could be charged in any one monthly billing cycle, and induced thereby, in or about August 2013 the Plaintiff entered into a post-paid mobile telephone agreement with the Defendant in connection with the Mobile Phone (the "**Phone Agreement**").
4. The terms of the Phone Agreement were, *inter alia*, as follows:
 - a. The Defendant would provide telephone and data services to the Plaintiff on a post-paid basis (the "**Services**") in relation to her account for the Mobile Phone, under a package plan costing CI\$31 per month.
 - b. The Plaintiff would be able to receive the Services under the package plan, with any additional services up to a maximum value of CI\$187.50 per monthly billing cycle, this amount being expressly stated in writing to be the credit limit for the Plaintiff's account.

- c. A security deposit of CI\$200 (the “**Security Deposit**”) would be paid by the Plaintiff and held by the Defendant to secure due payment for the Services and was proportionate to the package plan of CI\$31 per month and agreed monthly credit limit of CI\$187.50 in any one billing cycle.
 - d. The Plaintiff would pay for the Services received each month under the package plan and with any additional services not to exceed the credit limit of CI\$187.50.
5. The Plaintiff relied on the agreed credit limit under the Phone Agreement being CI\$187.50 as stated in writing on every invoice received from the Defendant under the Phone Agreement as an express written representation that this was the maximum value of the Services which could be received in any one billing cycle, and more importantly, was the maximum amount of liability which the Plaintiff could incur in phone or data charges in any one monthly billing cycle.
6. From August 2013 to July 2017 the Defendant provided the Services and the Plaintiff paid promptly each month.
7. On 21 July 2017, when the Plaintiff was travelling back to the Cayman Islands from the Virgin Islands via Miami, she was compelled to use her phone to access the internet to make alternative travel arrangements when her original flights were cancelled due to a tropical storm.
8. On 2 August 2017 the Plaintiff received a text message informing her the balance to pay for the Mobile Phone was CI\$82.00 which the Plaintiff paid immediately.
9. Only upon receipt of an invoice dated 26 August 2017, which showed a balance carried forward from July 2017 of CI\$1,024.18, did the Plaintiff discover that in breach of the Phone Agreement and the agreed express credit limit, charges of CI\$980 for web access / data charges in one single day - namely on 21 July 2017 - had been added to the Mobile Phone account (the “**Disputed Charges**”).
10. The Plaintiff contacted the Defendant in September 2017 to challenge the Disputed Charges and email correspondence passed between the parties. In an open email

dated 13 September 2017 addressed to Sheena Hurlstone of the Defendant, the Plaintiff offered to pay CI\$285.74 in full and final settlement of the CI\$1,059 claimed in the 26 August 2017 invoice (including the Disputed Charges in the CI\$1,024.18 carried forward from July), namely, CI\$35.74 incurred in the billing cycle since 26 July 2017 and CI\$250 in relation to the Disputed Charges.

11. In or about September 2017 the Defendant suspended or terminated the Services and the Plaintiff could not use the Mobile Phone for either phone calls, text messages or data. Email correspondence took place between the parties in September and October 2017, but the Defendant gave no explanation, reason or justification why the Plaintiff's Mobile Phone account could have incurred data-web-access charges some four times the agreed credit limit in one day, and appeared unwilling to seek any resolution of the Disputed Charges with the Plaintiff, a customer whose account had previously been in continuous good standing for four years previously.
12. Despite the discontinuation of the Services, the Plaintiff continued to receive monthly invoices showing a recurring monthly billing charge of CI\$31 under the package plan from November 2017 to April 2018 as well as late charges, which the Plaintiff disputes, but otherwise had no further contact with the Defendant.
13. In breach of the express terms of the Phone Agreement which permitted the Defendant to charge the Plaintiff amounts only up to the agreed credit limit of CI\$187.50 in any monthly billing cycle, the Defendant terminated the Plaintiff's Mobile Phone account and reallocated the number 1 345 525 2627 to an unknown person without notice to the Plaintiff on an unknown date.
14. On 8 November 2020, the Plaintiff received an email from Rohan Lawrence, an accounts receivable manager employed by the Defendant, informing her that CI\$982.88 remained due on the Mobile Phone account (the CI\$200 security deposit having apparently been applied). Mr Lawrence stated: *"if you had any queries regarding this payment, please let us know, we are happy to clarify them"*.
15. The Plaintiff responded by email also dated 8 November 2020 as follows:

"The August 2017 balance on my account has long since been disputed and I refer you to my email correspondence with Sheena Hurlstone in October 2017. Please see attached. My credit limit was always \$187.50 and I took this as a representation to me as well, that I could not incur charges on my Digicel account in excess of \$187.50 in any billing period.

Despite this credit limit and implied representation that Digicel would not permit any balance over US\$187.50 on this phone, I quite inadvertently managed to incur US\$980 in data-roaming charges on one single day while travelling (21 July 2017). Not one single message or alert from Digicel warned me of such massive charges being incurred for data usage.

I would like to re-activate this phone and have the number (525 2627) again. Digicel have lost over two years and 3 months of monthly post-paid billing to me by your refusal to waive the disputed excess charge. Prior to this dispute the account had been maintained in perfect order for 4 years.

I accept only my liability for an amount up to the agreed credit limit of US\$187.80. This should be deducted from the August 2017 balance brought forward of \$1,024. I repeat my previous offer of an amount of \$250 in full and final settlement of the August 2017 bill on the condition that the number 525 2627 can be reactivated.

Please confirm that you will waive this long disputed excess charge, and then I can reactivate the account on a pre-paid basis".

16. Instead of any response from Mr Lawrence to this email honouring his written offer to clarify any query, the Plaintiff received a "demand notice" on 26 July 2021 informing her that her allegedly "delinquent account with Digicel has been listed with the Cayman Islands National Credit Bureau ("CINCB") for full and immediate collection and has been recorded on your credit record. Current balance outstanding is CI\$1,310.47." This email gave no explanation as to how the balance of CI\$982.88 in November 2020 had increased to CI\$1,310.47 and no documentation evidencing this increase was provided nor any break down of the debt allegedly due.

17. The Plaintiff responded to the CINCB email immediately to inform them that the debt had been disputed for a significant time, and summarised the facts as appearing in this Plaintiff.
18. CINCB, like the Defendant, has failed either to acknowledge or address the central issue of the dispute between the Parties, namely that the Defendant is not entitled to claim any amount in excess of either the agreed credit limit of CI\$187.50 or alternatively the agreed Security Deposit of CI\$200. By a further email dated 5 August 2021 CINCB offered the Plaintiff a 20% discount off the alleged debt of CI\$1,310.47 in exchange for immediate payment.
19. This is the first time the Plaintiff has been served with a demand by CINBC or had her excellent credit record blemished by an allegedly unpaid debt. The publication of a record of such alleged delinquent debt and its non-payment, which would be accessible to financial institutions or persons with authority to access the CINCB data-base in the Cayman Islands, constitutes the publication of a defamatory statement. It is self-evidently injurious to the Plaintiff's reputation as an attorney, notary public, director of a licensed company management company regulated by the Cayman Islands Monetary Authority ("CIMA"), as well as being a CIMA-licensed director able to offer fiduciary services to other CIMA licensed entities, to be portrayed as a person who is alleged to be unable to pay her debts as they fall due, and thus calls into question her capacity and fitness to conduct her usual professional activity.
20. By reasons of the facts and matters aforesaid, the Plaintiff is entitled to and claims the following declarations:
 - (a) That the agreed credit limit of CI\$187.50 which appeared in writing on every invoice from the Defendant to the Plaintiff is a representation on which the Plaintiff was entitled to rely, that the maximum amount of charges which could be incurred on the Mobile Phone account in any monthly billing cycle pursuant to the Phone Agreement was CI\$187.50.

(b) That the maximum amount for which the Plaintiff could be liable under the Phone Agreement in any monthly billing cycle was CI\$187.50 or alternatively, the Security Deposit amount of CI\$200.00.

(c) That the Defendant is estopped from claiming from the Plaintiff any amount in excess of the Security Deposit of CI\$200 in relation to the disputed invoices dated July 2017 and August 2017.

(d) That having suspended or alternatively terminated the Services to the Plaintiff in or about September 2017, the Defendant was not entitled to continue charging for such services which were never provided from October 2017 to April 2018 together with late charges.

(e) That the Plaintiff is not indebted to the Defendant in any amount (the latter having retained the benefit of the Plaintiff's Security Deposit in the sum of CI\$200 and payment for July 2017 in the sum of CI\$82.00).

(f) That CINBC is not entitled to recover on behalf of the Defendant any amount from the Plaintiff, and was never entitled to record *any* debt allegedly due to the Defendant on her credit record, which should be expunged forthwith.

21. If which is denied, any amount should be found due to the Defendant from the Plaintiff in excess of the agreed credit limit of CI\$187.50, the written representation appearing on each invoice issued pursuant to the Phone Agreement that the Plaintiff's credit limit is CI\$187.50, is false.
22. The Plaintiff is entitled to and claims damages for misrepresentation, such damages being equivalent to the amount of any debt which is found due to the Defendant from the Plaintiff in excess of the agreed credit limit of CI\$187.50.
23. The Plaintiff is entitled to and claims damages for defamation in the sum of CI\$10,000 being the equivalent of the amount in fees which the Plaintiff could have charged in legal services to other clients if she had not been obliged to spend significant time on these proceedings to protect her professional and personal

reputation from the serious harm caused by the Defendant's actions in causing an allegedly unpaid debt to be recorded by CINCB and to redeem her credit record.

24. The Plaintiff is also entitled to and claims the costs of replacement business cards which had to be printed when the Defendant wrongfully terminated the Plaintiff's phone account, without justification in light of the Disputed Charges.

AND THE PLAINTIFF CLAIMS:

- a) A declaration that the agreed credit limit of CI\$187.50 which appeared in writing on every invoice from the Defendant to the Plaintiff is a representation on which the Plaintiff was entitled to rely, that the maximum amount of charges which could be incurred on the Mobile Phone account in any monthly billing cycle pursuant to the Phone Agreement was CI\$187.50.
- b) A declaration that the maximum amount for which the Plaintiff could be liable under the Phone Agreement in any monthly billing cycle was CI\$187.50 or alternatively, the Security Deposit amount of CI\$200.00.
- c) A declaration that the Defendant is estopped from claiming from the Plaintiff any amount in excess of the Security Deposit of CI\$200 in relation to the balance of the disputed invoices dated July 2017 and August 2017.
- d) A declaration that having suspended or alternatively terminated the Services to the Plaintiff in or about September 2017, the Defendant was not entitled to continue charging for such Services which were never provided from October 2017 to April 2018 together with late charges.
- e) A declaration that the Plaintiff is not indebted to the Defendant in any amount (the latter having retained the benefit of the Plaintiff's Security Deposit of CI\$200 and payment for July 2017 in the sum of CI\$82.00).
- f) A declaration that CINBC is not entitled to recover on behalf of the Defendant any amount from the Plaintiff, and was never entitled to record any debt alleged to be

due to the Defendant on the Plaintiff's credit record and should expunge the same forthwith.

- g) Damages for defamation in the sum of CI\$10,000.
- h) Damages for misrepresentation in the sum of CI\$1,310.47, or alternatively to be assessed.
- i) The cost of reprinting business cards in the sum of CI\$100 to include a new mobile phone number.
- j) Fixed costs of CI\$2,000 and filing fees of CI\$25.00.
- k) Such further and other relief as this Court may deem just.



SINCLAIRS
Attorneys for the Plaintiff

This PLAINT was filed by Sinclairs, Attorneys-at-Law for and on behalf of the Plaintiff whose address for service is 3rd Floor Genesis Building, Genesis Close, PO Box 498, Grand Cayman, KY1-1106, Cayman Islands

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CAUSE NO: OF 2021

B E T W E E N:

SARAH DOBBYN-THOMSON

Plaintiff

AND

DIGICEL CAYMAN LTD

Defendant

ACKNOWLEDGMENT OF SERVICE

1. State Defendant's name and address:

Digicel Cayman Ltd c/o International Corporation Services Ltd,
PO Box 472, Harbour Place, 2nd Floor, North Wing, 103 South
Church Street, George Town Grand Cayman, KY1-1106.

2. State whether the Defendant intends to contest the action.

Yes

No

3. If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4. If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf.

Service of the Plaintiff is acknowledged accordingly.

Defendant's Signature

Dated this ____ day of _____ 2021

See overleaf

PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs the grounds upon which the Defendant says that it is not liable to the Plaintiff, or is not liable for the full amount claimed)

Defendant's Signature

REMINDER - This form must be taken or sent to the Court Office, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands, within 14 days of receipt otherwise a default judgment may be entered against you.