

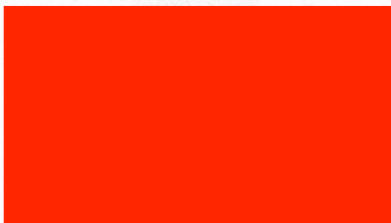


We write regarding the above Claim.

Please find enclosed a copy of the Claimant's witness statement and evidence that we wish to rely on for the forthcoming hearing. We can confirm that a copy has been served on the Court.

If you have any queries, please do not hesitate to get in touch.

Yours faithfully



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VEHICLE CONTROL SERVICES LIMITED

CLAIMANT

v

DEFENDANT

WITNESS STATEMENT

will say

as follows:

Introduction

1. I am employed by Vehicle Control Services Limited as a Paralegal and have been employed since January 2018. The facts and matters referred to in this witness statement are within my own knowledge, except where I have indicated otherwise. Where the facts are within my knowledge, they are true. Where they are not within my own knowledge, they are true to the best of my information and belief.
2. I make this witness statement in readiness for the hearing scheduled for 3rd September 2020 in support of the Claimant's claim against the Defendant.
3. Within this statement I make reference to various documents. These are now produced to me in a paginated bundle marked YC1-2. The evidence tendered in the exhibits is taken from the Claimants' Company records.

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Background

4. The Claimant is engaged in providing and managing private parking facilities on behalf of Clients throughout Great Britain.
5. At all material times, the Claimant has been an Accredited Member of Approved Trade Associations certified by the Driver and Vehicle Licensing Agency (DVLA), and was awarded Approved Operator Status through its full compliance with their Code of Practice for Private Enforcement on Private Land and Unregulated Car Parks. This Code of Practice gives recommendations in regards to the signage within the Car Parks and the Claimant follows these recommendations.
6. This action relates to private land situated at Bristol Airport situated in Bristol. Bristol Airport is a development and the roadways leading into it are managed and enforced by the Claimant. In particular, set Terms and Conditions of entering private land are enforced in so far as all vehicles must not stop their vehicles on the roadways around and leading into the development.
7. Whilst the vehicle was parked within the development the Defendant was confirmed as the registered keeper of the vehicle bearing the registration of [REDACTED]. The said vehicle was parked within the development in breach of the advertised Terms and Conditions to which the Defendant has failed to settle any outstanding liability.
8. As reiterated, stopping is not permitted within with roadways of the development which is managed by the Claimant. The Claimant manages the development by employing Patrol Staff ["PS"] to monitor compliance to the advertised Terms and Conditions. It is the role of the PS to monitor vehicles by CCTV and ensure compliance with the Terms and Conditions.

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Terms and Conditions

9. The Terms and Conditions set by The Client was to ensure that no vehicles were identified stopped on the roadways within the development. The scheme was to ensure that the roadways were left clear to ensure the free flow of traffic and prevent congestion.
10. The Terms and Conditions were implemented due to growing congestion caused by vehicles stopping and blocking lanes. The subsequent congestion has created safety risks for other motorists and impeded access to critical areas of the development.
11. Any vehicles which were identified parked, stopped or waiting on the roadways would be deemed to be parking in breach of the advertised Terms and Conditions. This system was chosen by the Client as it was low tech, relatively inexpensive and proven to work. This was to use warning notices to create a system where people are warned that they are entering upon private land where parking is controlled by the Claimant and that they offer to admit them only on the published terms.

Title and Interest

12. In order to address the difficulties within the development the lawful occupant, Bristol Airport Limited ["Our Client"], appointed the Claimant to manage within the development. Following their appointment, the Claimant erected warning notices throughout the development making clear that anyone parking within the development did so on in accordance with the Terms and Conditions of the sign. This was in order to regulate the parking situation in accordance with the powers conferred upon the property managers of the development.
13. The Claimant submits that they have the authority to implement a parking scheme since 7th October 2019. There has been no notice of termination and the

Claimant remains contracted to enforce parking to date. The Claimant is contracted to undertake parking management activities and issue Parking Charge Notices ["PCN"] where vehicles are identified on the development in breach of the advertised Terms and Conditions. A copy of a contract with our Client can be identified in exhibit YC1.

14. The Claimant manages the parking scheme and regularly inspects the development in accordance with their appointment. The Claimants' role is to erect signs within the development explaining the Terms and Conditions associated with parking. The warning signs are visible upon entry to the development and throughout the location.

Liability of the Defendant to the Claimant

15. The Claimants' production of exhibit YC2 is evidence of the date, time and location that the Defendant parked his vehicle in contravention of the Terms and Conditions associated with parking within the development. The Claimant would ensure compliance of the Terms and Conditions and when noting that the Defendant's vehicle was parked in breach of the Terms and Conditions, the Claimant issued a Charge Notice to the Defendant
16. In order to issue the CN the Claimant must first obtain the RK's details from the Driver and Vehicle Licensing Agency ["DVLA"]. Once received, then the Claimant would issue a CN usually within 14 days of the contravention. This allowed the Defendant the opportunity to either appeal or pay the PCN.
17. The notice informs the RK that a Parking Charge has been issued to the vehicle they are responsible for and provides the opportunity to either pay the reduced charge of £60.00, appeal within 21 days via a portal accessible on www.myparkingcharge.co.uk or transfer liability to the driver of the vehicle. The portal further allows the RK the opportunity to review the photographic evidence.

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18. Should the motorists wish to raise an appeal there is a two-tier appeals procedure. The first tier is to appeal directly to the Claimant within 21 days via www.myparkingcharge.co.uk. Once an appeal is received, it is then assessed by an adjudicator within our appeals department, of whom then decides whether to accept or reject the motorists' appeal.

19. Should the adjudicator accept the contents of the appeal, the PCN will be cancelled with immediate effect. However, should the appeal be rejected then a Representation of Rejection ["ROR"] will be sent to the motorists, by the email address provided when submitting their appeal, rejecting the appeal and given their reasons as to why. Further, the motorists will then be provided with the opportunity to escalate the appeal further to the Independent Appeals Service ["IAS"]. This is known as the second tier stage.

20. The IAS is an independent body provided by our Trade Association, the International Parking Community ["IPC"], in order to provide an impartial adjudicator to deal with the appeal. A decision on the appeal is binding on the Claimant but not the motorist.

21. Any appeal made to the IAS must be made within 21 days. Should the appeal be upheld in favour of the motorist then the Claimant is bound to cancel the PCN. If the appeal is found in favour of the Claimant then they are able to recover the amount of £100.00 should it still remain outstanding.

22. In the absence of any payment or correspondence from the Charge Notice, the Claimant will send a Final Reminder ["FR"] reiterating the contents of the Charge Notice and allowing the Defendant a final opportunity to pay the charge.

23. It is submitted that liability exists in each instance of parking in accordance with the notice issued to the Defendant on each instance. The Claimant submits that the Claimant's evidence ought to be preferred in this matter. The Claimant implemented a parking scheme and the Defendants' vehicle was identified in

breach of the advertised Terms and Conditions of parking within the development.

Authorities

24. It is settled that individuals may enter into a contract with a sign and reference is made to **Thornton v Shoe Lane Parking 1971 2 QB 163**. The Defendant ought to have been made aware of the Terms and Conditions of entering private land.
25. The Claimant is entitled to charge for each instance in which the Defendant has been identified in breach of the advertised Terms and Conditions at the development. In this case, the charge for breaching the Terms and Conditions is £100.00 discounted to £60.00 if paid within 14 days.
26. This is a contractual clause which specifies the amount owed. The Claimant wishes to rely on the precedent set under **Vine v Waltham Forest LBC [2002] 1 WLR 2383, 2390**, where Roch L.J. stated:

"the question whether a person voluntarily assumes a risk or consents to trespass to his or her property is to be judged objectively and not subjectively. Once it is established that sufficient and adequate warning notices were in place, a car driver cannot be heard to say that he or she did not see the notice. Were that to be the law, it would be too easy for car drivers who trespass with their cars to evade the only method land owners have of stopping the unauthorised parking spaces or parking areas on their property"

27. The Claimant also relies upon the authority of **Vehicle Control Services Limited v Crutchley** in whereby HHJ Wood concluded that the warning notices this is an acceptable and enforceable contractual arrangement. Whilst the smaller notices give cause for concern that their content is not easily identifiable for a driver, nevertheless it is difficult to see how the Terms and Conditions could

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otherwise be communicated. It is incumbent on a person entering private property, when it is clear that a contractual licence is being provided, to understand the terms of such a licence.

28. The Claimant further relies upon **Schedule 4 of the Protection of Freedoms Act 2012** and contends that they can hold the Defendant liable for the PCN under the said enactment. The relevant clause is;

"4 (1) The creditor has the right to recover any unpaid parking charges from the keeper of the vehicle..."

...5 1 (b)...if they are unable to take steps to enforce that requirement against the driver because the creditor does not know both the name of the driver and a current address for service for the driver..."

29. The signage is prominently displayed and visible on entry to the site. It is submitted that the Claimant has done what is reasonable to draw attention to the existence of the contractual terms and therefore has given sufficient notice of them.

30. The Supreme Court in **ParkingEye v Beavis [2015] UKSC 67** has established that in cases as this, a contract exists between the Motorist and the Operator, whereby the Motorist is granted a contractual licence to park their car in the Car Park on the terms of the notice posted at the site, which are accepted by entering and leaving the vehicle at the site.

The Defendants' Defence

The Defendant has produced a long winded Defence that does not address the allegations contained within the particulars of claim, thus the Claimant requests for the Defence to be struck out.

31. The terms and conditions of private land where the Defendant's vehicle had stopped stated the following: 'No Stopping £100 Charge If You Stop.'

32. The Claimant's evidence contained within YC2 clearly show that the Defendant's vehicle had stopped on double red lines, whilst a passenger exited the vehicle. Thus the contravention was recorded as stopping in a zone where stopping is prohibited, thus breaching the contractual licence and incurring a parking charge accordingly.

33. The Claimant respectfully refers the Court to the case of **Vehicle Control Services Ltd v Damen Ward [2018]** where the Defendant had stopped his vehicle in a no stopping zone as he thought his vehicle had a mechanical fault. The Claimant argued that a breach was a breach regardless of the mitigating circumstances. Further, a breach caused by an unforeseen circumstance is not a defence in law. HHJ Saffman at paragraph 33 stated:

'It is right to point out that in this case Mr Ward stopped his vehicle because he thought he may have a mechanical fault. Nevertheless, the clear message from this passage in Beavis is that a breach caused by unforeseen circumstances, certainly a breach that is not caused by the conduct of another such as, for example, being obliged to stop because somebody is crossing the road, is no defence.'

34. The Claimant merely wishes to use the above case as a binding authority on the basis that it reinforces the principle that a breach caused by unforeseen circumstances is not a defence in law.

Summary

35. The Claimant was entitled to erect signs with the development in accordance with their appointment by the freeholder. The signs were duly erected at the development. The Defendant ought to have been made aware of the Terms and

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Conditions of parking. The Defendant could not have been in doubt, at worst, after the issue of the first PCN.

36. The Claimant wishes to rely on **ParkingEye v Beavis [2015] UKSC 67** and submits that it has a legitimate interest in enforcing the Parking Charges as stated. This is how the Claimant can support the services they provide to their client. The Claimant avers that its charges are “neither extravagant nor unconscionable”.

37. Accordingly the Claimant is entitled to a Judgment. It is a matter of agreement that the instance of parking in contravention of the Terms and Conditions of the signs. Liability is agreed to be £100.00 in accordance with the amount stated on the signs. The Claimant submits that they are therefore entitled to a Judgment for the amount claimed together with expenses of the cause.

38. In view of the Defendant not paying the charge within 28 days the breach of the contract entitles the Claimant to damages as of right in addition to the CN incurred. The warning notices make it clear that damages will be sought and added to the value of the charge levied. The maximum amount awarded is £60.00 which is identified as a debt recovery charge. The Claimant would place reliance upon the Court of Appeal ruling in **Chaplain Limited v Kumari [2015] EWCA 798**:

“that does not alter the fact that it remains a contractual entitlement which the Court will enforce subject to its equitable power to disallow unreasonable expenses. There is nothing in the rule making powers in respect of the CPR which enable the rules to exclude or override that contractual entitlement and I therefore agree with Arden LJ that the Judge had jurisdiction to assess the costs free from any restraints imposed by CPR 27.14”.

STATEMENT OF TRUTH

I believe the contents of this witness statement are true