

IN THE COUNTY COURT AT STAINES

CLAIM No: **G1GF583Y**

BETWEEN:

UK CAR PARK MANAGEMENT LTD (Claimant)

-and-

XXXXXX (Defendant)

Witness Statement

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1. I am **XXXXXX** of **XXXXXX** and I am the defendant against whom this claim is made. The facts below are true to the best of my belief and my account has been prepared based upon my own knowledge. Any evidence to my statement I will refer to the attached documents as Exhibit DD01, Exhibit DD02 and so on. My defence is repeated and I will say as follows:

2. The facts in this statement come from my personal knowledge. Where they are not within my personal knowledge, they are true to the best of my information and belief.

3. I am the Registered Keeper of the vehicle in question on the 7th December 2018 and thereafter.

4. The claim against me relates to parking charges that allegedly occurred at my previous address **XXXXXXXX** I was a tenant from 31st August 2018 to 30th August 2020 [See exhibit DD01 Assured shorthold tenancy agreement].

5. When I moved into the property the landlord told me parking bay 170 was allocated to the property. At some point, previous to my tenancy the managing agents contracted with the Claimant company, but they are strangers to the lease I signed, and I was led to believe that

the regime was intended to deter trespassers not long-standing residents who pay towards the buildings upkeep.

6. On the date of the incident my vehicle was displaying the parking permit, where part of the Claimant's logo and bay number is visible. The parking attendant clearly saw this permit as they have provided photographs of it.

7. I had no reason not to display the permit for my allocated bay but it was merely displayed out of courtesy for other residents to see. It was always displayed but I was completely unaware of any obligation or onerous risk of a parking charge against residents; surely the intention of the landowners cannot have been to see known, permitted residents fined and sued. The only parking permit in my possession was the one for the allocated bay my vehicle was parked in. [See Exhibit DD11 image of parking permit]

8. The underground car park contains allocated parking spaces demised to residents, and a few visitor-parking bays. Access to this car park is restricted and the electric gate opened only by using a key fob, given only to residents authorised to enter the car park.

Primacy of Contract

9. There is no licence to park that this Claimant can possibly offer me that I did not already have as an unfettered right. This Claimant is trying to run the car park like a commercial site, on the same punitive terms as a trespasser would be charged. This would clearly be a derogation from grant and I wish to make clear that I did not agree to contractual terms, just because a permit was imposed upon me with no opt out offered. Permits were displayed as a courtesy only, to show other residents who was parked.

10. Under the terms of my lease there is one reference made about parking motor vehicles. States under special provisions The 'Rights granted to the Tenant' within the 'Lease' "It is agreed that the Tenant has use of one car parking space - for car registration XXXX - at the Property throughout the Tenancy Period" no mention of needing to display a valid permit.

11. The parking bay allocated to the property where my car was parked on a nightly and daily basis is clearly marked with number 170 [See exhibit DD02 picture of parking bay], as allocated solely to the resident of marked apartment.

12. There are no terms within the lease requiring lessees to display parking permits, or to pay

penalties to third parties, such as the Claimant, for non-display of the same. Therefore, my case relies on Primacy of Contract. I refer previous cases such as Pace v Mr N [2016] C6GF14F0 [2016] [See exhibit DD03], where it was found that the parking company could not override the tenant's right to park by requiring a permit to park.

13. I did, at all material times, park in accordance with the terms granted by the lease. The erection of the Claimant's signage, and the purported contractual terms conveyed therein, are incapable of binding me in any way, and their existence does not constitute a legally valid variation of the terms of the lease. Accordingly, I deny having breached any contractual terms whether express, implied, or by conduct.

14. My vehicle clearly was 'authorised' as per the lease and primacy of contract and avers that the Claimant's conduct in aggressive ticketing is in fact a matter of tortious interference, being a private nuisance to residents. In this case the Claimant continues to cause a substantial and unreasonable interference with the land/property, or my use or enjoyment of that land/property.

15. The Claimant, or Managing Agent, in order to establish a right to impose unilateral terms, which vary the terms of the lease, must have such variation approved by at least 75% of the leaseholders, pursuant to s37 of the Landlord & Tenant Act 1987, and I am unaware of any such vote having been passed by the residents.

18. This is clear from several cases. An example In PCM-UK v Bull et al B4GF26K6 [2016] [See exhibit DD04], residents were parking on access roads. The signage forbade parking and so no contract was in place. A trespass had occurred, but that meant only the landowner could claim, not the parking company.

19. The lease does not limit, nor can it limit the use of the allocated parking bay nor can I, the tenant be charged for using it appropriately. There is no requirement under the lease to display a permit to park in the allocated parking bay for the associated property. The lease has primacy of contract. This attests to the judgment of Deputy District Judge Metcalf in the Link Parking Ltd v Parkinson – C7GF50J7 case. [See exhibit DD05]

DE MINIMIS PRINCIPLE / UNFAIR TERM

22. I parked in accordance with the Lease agreement with the Landlord and genuinely made every effort to comply with the spirit of parking in accordance with maintaining the control

intended by the Landlord. The permit simply slipped into the dashboard due to poor adhesive yet was still visible, therefore this small human error comes under the de minimis principle.

23. In *Jolley v Carmel Ltd* [2000] 2 –EGLR -154, it was held that a party who makes reasonable endeavours and takes reasonable steps to comply with contractual terms, should not be penalised for breach outside of their control. [See exhibit DD06]

24. It is my view that the display of a valid permit in some circumstances can be synonymous with a parking ticket bought from a machine. Fluttering tickets are routinely accepted as a valid defence to Council Penalty Charge Notices and whilst contractual principles are not applied to such notices, it is indicative of the fact that circumstances out of your control, and where the driver has clearly paid for the parking, are deemed a good reason for those notices to be cancelled.

Redaction

26. The Claimant has appended a redacted 'landowner contract' which has little or no probative value and which offends against the rules of evidence. There is nothing to show the boundary/map, nothing to say what the landowner's approach (whoever they may be) is to penalising genuine patrons who pay towards the buildings upkeep, and even the signatories could be anyone (even a stranger to the land?). It is clear that two Directors have not signed this contract for either party, contrary to the Companies Act 2006. The network of contracts are key in these cases, since the parking charges are argued to be contractual and the authority to sue visitors must flow from the landowner, not an agent.

27. In the recent Court of Appeal case of *Hancock v Promontoria (Chesnut) Limited* [2020] EWCA Civ 907 – [See exhibit DD07]

The Court of Appeal are now clear that most redactions are improper where the Court are being asked to interpret the contract. Ref. paras 74 & 75 "*...The document must in all normal circumstances be placed before the court as a whole. Seldom, if ever, can it be appropriate for one party unilaterally to redact provisions in a contractual document which the court is being asked to construe, merely on grounds of confidentiality...confidentiality alone cannot be good reason for redacting an otherwise relevant provision...*"

Abuse of process - the quantum

28. The Claimant has added a sum disingenuously described as 'damages/admin' or 'debt collection costs'. The added £60 constitutes double recovery and the court is invited to find the quantum claimed is false and an abuse of process [See exhibit DD08] transcript of the

Approved judgment in *Britannia Parking v Crosby* (Southampton Court 11.11.19). That case was not appealed and the decision stands.

29. Whilst it is known that another case that was struck out on the same basis was appealed to Salisbury Court (the *Semark-Jullien* case), the parking industry did not get any finding one way or the other about the illegality of adding the same costs twice. The Appeal Judge merely pointed out that he felt that insufficient information was known about the *Semark-Jullien* facts of the case (the Defendant had not engaged with the process and no evidence was in play, unlike in the Crosby case) and so the Judge listed it for a hearing and felt that case (alone) should not have been summarily struck out due to a lack of any facts and evidence.

30. The Judge at Salisbury correctly identified as an aside, that costs were not added in the Beavis case. That is because this had already been addressed in ParkingEye's earlier claim, the pre-Beavis High Court (endorsed by the Court of Appeal) case *ParkingEye v Somerfield* (ref para 419): [See exhibit DD09]

"It seems to me that, in the present case, it would be difficult for ParkingEye to justify, as against any motorist, a claim for payment of the enhanced sum of £135 if the motorist took the point that the additional £60 over and above the original figure of £75 constituted a penalty. It might be possible for ParkingEye to show that the additional administrative costs involved were substantial, though I very much doubt whether they would be able to justify this very large increase on that basis. On the face of it, it seems to me that the predominant contractual function of this additional payment must have been to deter the motorist from breaking his contractual obligation to pay the basic charge of £75 within the time specified, rather than to compensate ParkingEye for late payment. Applying the formula adopted by Colman J. in the Lordsvale case, therefore, the additional £60 would appear to be penal in nature; and it is well established that, in those circumstances, it cannot be recovered, though the other party would have at least a theoretical right to damages for breach of the primary obligation."

31. This stopped ParkingEye from using that business model again, particularly because HHJ Hegarty had found them to have committed the 'tort of deceit' by their debt demands. So, the Beavis case only considered an £85 parking charge but was clear at paras 98, 193 and 198 that the rationale of that inflated sum (well over any possible loss/damages) was precisely because it included (the Judges held, three times) 'all the costs of the operation'. It is an abuse of process to add sums that were not incurred. Costs must already be included in the parking charge rationale if a parking operator wishes to base their model on the *ParkingEye v Beavis* case and not a damages/loss model. This Claimant cannot have both.

32. This Claimant knew or should have known, that by adding £60 in costs over and above the purpose of the 'parking charge' to the global sum claimed is unrecoverable, due to the POFA at 4(5), the *Beavis* case paras 98, 193 and 198, the earlier *ParkingEye Ltd v Somerfield* High Court case and the Consumer Rights Act 2015 ('CRA') Sch 2, paras 6, 10

and 14. All of those seem to be breached in my case and the claim is pleaded on an incorrect premise with a complete lack of any legitimate interest.

My fixed witness costs - ref PD 27, 7.3(1) and CPR 27.14

33. As a litigant-in-person I have had to learn relevant law from the ground up and spent a considerable time researching the law online, processing and preparing my defence plus this witness statement. I ask for my fixed witness costs. I am advised that costs on the Small Claims track are governed by rule 27.14 of the CPR and (unless a finding of 'wholly unreasonable conduct' is made against the Claimant) the Court may not order a party to pay another party's costs, *except fixed costs such as witness expenses* which a party has reasonably incurred in travelling to and from the hearing (including fares and/or parking fees) plus the court may award a set amount allowable for loss of earnings or loss of leave.

34. My travel costs depend upon whether the hearing is in person but the fixed sum for loss of earnings/loss of leave apply to any hearing format and are fixed costs at PD 27, 7.3(1) "*The amounts which a party may be ordered to pay under rule 27.14(3)(c) (loss of earnings)... are: (1) for the loss of earnings or loss of leave of each party or witness due to attending a hearing ... a sum not exceeding £95 per day for each person.*"

CPR 44.11 - further costs

35. I am appending with this bundle, a fully detailed costs assessment which also covers my proportionate but unavoidable further costs and I invite the court to consider making an award to include these, pursuant to the court's powers in relation to misconduct (CPR 44.11). In support of that argument, I remind the court that I appealed and engaged with the Claimant at every step and they knew all along that the tariff has been paid. Not only could this claim have been avoided and the Claimant has no cause of action but it is also vexatious to pursue an inflated sum that includes double recovery. This is compounded by the witness altering the Statement of Truth (an attempt to avoid a personal duty) and attaching stock images of signs instead of actual images and a redacted 'landowner authority' document that could be from anyone, as well as trying to mislead me and the court with a citation of *Elliott v Loake* which has already been held on appeal to be 'improper' in a parking case.

Statement of truth:

I believe that the facts stated in this Witness Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

SIGNATURE XXXX

DATE 08/09/2020