

IN THE COUNTY COURT AT DERBY

CLAIM NO: [REDACTED]

BETWEEN

EXCEL PARKING SERVICES LIMITED

CLAIMANT

V

MS [REDACTED]

DEFENDANT

WITNESS STATEMENT

I, Ambreen Arshad, of Unit P1 Europa Link, Sheffield Business Park, Sheffield, S9 1XU,
will say as follows:

Introduction

1. I am employed by Excel Parking Services Limited as a Paralegal and have been employed since January 2019. 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 10th December 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 AA1-2. The evidence tendered in the exhibits is taken from the Claimant's Company records.

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 a Pay and Display development known as Siddals Road Commercial Car Park situated in Derby, DE1 2PY. A Pay and Display system is in operation to regulate parking within 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.

Title and Interest

8. The Claimant is the Leaseholder of the Car Park. 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.

9. The Claimant submits that they have the authority to implement a parking scheme since 25th August 2011. 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 the Leaseholder Witness Statement can be identified in exhibit AA1.
10. Further to this role, the Claimant was appointed to monitor the development for compliance with the Terms and Conditions. If particular vehicles were parked in breach of the Terms and Conditions, then a motorist would be issued with a PCN. The Claimant's role was therefore simply to enforce the conditions.
11. In accordance with their contract appointing the Claimant, the Claimant was entitled to pursue any parking charges as a result of breach of the Terms and Conditions of the parking scheme in their own names. The signs throughout the development clearly advise anyone parking within the development that they were entering into a contract with the Claimant. The Claimant was entitled to contract with drivers on behalf of the owners of the development in accordance with their appointments.

Breach of the Terms and Conditions

12. A Pay and Display system is in operation within the development, which is managed by the Claimant. The Claimant manages the car park by employing Patrol Officers [PO] to monitor the Car Park. It is the role of the PO to issue PCN to any vehicles identified in breach of the advertised Terms and Conditions.
13. The Claimant's production identified in exhibit AA1 contains information as to the development. Within the productions enclosed is;

- A Leaseholder Witness Statement

- Photographs of the Car Park
- Signage Artwork
- Overhead of the Car Park.

14. The Claimant manages the parking scheme and regularly inspects the development in accordance with their appointment. The Claimant's 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 Car park and throughout the location;

- 2 Entrance Boards
- 3 Information Boards
- 1 Tariff Board
- 2 Pay & Display Machines
- 1 'All Day Parking' Sign
- 1 'Pay Here' Arrow

15. Amongst other things the above signs specifically detail the Terms and Conditions of parking and the consequences of failure to comply with these Terms and Conditions. In particular the signs specifically state that their charge for breaching the Terms and Conditions is £100.00 discounted to £60.00 if paid within 14 days. This is a contractual clause which specifies the amount owed. There is sufficient and adequate signage for the Terms and Conditions to have been brought to the attention of any motorist wishing to use the car park.

16. Whilst the vehicle was within the development the said vehicle was recorded parked without displaying a valid ticket/permit thus resulting in a PCN being issued.

Liability of the Defendant to the Claimant

17. The Claimant's production of exhibit AA2 is evidence of the date, time and location that the Defendant parked her 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 photographs were taken of the vehicle and a Privacy Notice put on the vehicle.
18. The Privacy Notice advised the Defendant that images of the vehicle had been recorded for the purpose of parking enforcement and gave details of how they could view the full Privacy Policy and/or contact our Data Controller. The Claimant will then apply to the Driver and Vehicle Licensing Agency [DVLA] in order to obtain the Registered Keeper details. Once received, then the Claimant would issue a PCN usually within 14 days of the contravention. This allows the Keeper the opportunity to either appeal or pay the Charge Notice.
19. 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.
20. 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.
21. 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.

22. Any appeal made to the IAS must be made within 21 days and 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.

23. 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.

24. 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 Defendant's vehicle was identified in breach of the advertised Terms and Conditions of parking within the development.

Authorities

25. 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 sign was the offer and the act of parking the acceptance of the offer on each occasion.

26. The Claimant is entitled to charge for each instance in which the Defendant's vehicle was observed parked without displaying a valid ticket/permit 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.

27. 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"

28. 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.
29. 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 Defendant's Defence

30. In response to the Defendant's Defence, the contravention images enclosed in exhibit AA2 show that on the 20th November 2019 the Defendant's vehicle was observed parked in Siddals Road Commercial Car Park in Derby without displaying a valid parking ticket when one needed to be displayed as per the Terms and Conditions. This rendered the Defendant in breach of the Terms and Conditions of the Car Park and liable for the Parking Charge advertised on the signage.

31. The Terms and Conditions printed on the signage (copy enclosed in exhibit AA1) erected in the Car Park specifically state, amongst other things, the following:

'24 Hour Pay & Display Car Park.

By entering this private car park you are entering into a contract with Excel Parking Services Ltd and you agree to pay a Charge if you fail to comply with the Terms and Conditions. Any vehicle/driver entering this private land is subject to and agrees in full to the Terms and Conditions.

Terms and Conditions

A valid Pay & Display ticket must be displayed inside the front windscreen of your vehicle with the date and time clearly visible at all times.

By entering this private land you agree to pay a Parking Charge if you fail to comply with the terms and conditions. The Parking Charge is £100.00 per day or part thereof (payable within 28 days of the Parking Charge Notice issue date), discounted to £60.00 if payment is received within 14 days of the Parking Charge Notice issue date.'

32. The Terms and Conditions are neither unusual nor unreasonable. They are set in stone by the Client, that is: **'A valid Pay & Display ticket must be displayed inside the front windscreen of your vehicle with the date and time clearly visible at all times'**, as it is private land otherwise a Parking Charge of £100.00 will be levied.

33. The Claimant submits that the predominant purpose of the Parking Charge is to deter motorists, such as the Defendant, from misusing the Car Park and that the occupier's objective include the following:

1. The need to provide parking spaces for customers;

2. The related need to prevent misuse of the parking for purposes unconnected with the customers' business; and
 3. The other purpose was to provide an income stream to enable the Claimant to meet the costs of operating the scheme and make a profit from its services, without which those services would not be available.
34. There are several warning signs prominently displayed within the Car Park as well as an entrance board at each entrance to the Site to warn motorists that they are entering/this is private land and parking is subject to Terms and Conditions. Furthermore, the Terms and Conditions on the signage are printed in a large font size, in bold and are legible. Thus, it cannot be a valid defence for any motorist to say "I did not see and read the signage" in an attempt to absolve liability and expect the Court to uphold this.
35. In any event, the Claimant submits that their signage is compliant with the IPC Code of Practice. The Claimant's signage is also audited and approved by the International Parking Community, and is therefore fully capable of forming a legally binding Contract with motorists entering the Car Park.
36. Reliance is placed upon the decision in **ParkingEye v Beavis [2015] UKSC 67** whereby the Defendant was given a contractual licence to park the vehicle in the development on the terms of the notice posted on various warning signs throughout the site, which he accepted by entering the car park. In relation to the Defendant, the terms were that the Defendant could only park her vehicle in the Car Park if, amongst other things, she displayed a valid parking ticket inside the vehicle and that on breach of this term, she would pay £100.00, which would be reduced to £60.00 if paid within 14 days. The £100.00 is the consideration.
37. The Claimant submits that as at 29 September 2014, they were a member of the accredited trade association of the Independent Parking Committee (IPC) to

claim form, unless the Particulars of Claim are served separately in accordance with paragraph 5.2 of this practice direction.

44. Notwithstanding the above, the Claimant submits that the Defendant could have made a Part 18 request for Further Information if he genuinely considered the Particulars to be insufficient, in that no cause of action was identifiable. However, it would appear from the Defendant's Defence that this was not utilised by the Defendant.

45. In any event, the Claimant submits that prior to the matter having been allocated to the Small Claims Track for a Hearing, the statements of case had been considered by the Judge, who was satisfied with the same and allocated it to the Small Claims Track. As such, the Particulars of Claim are adequate and compliant with the CPR.

46. The Claimant can confirm that the Claim is for breach of Contract, which is noted in the Particulars of Claim.

47. The Claimant relies on **ParkingEye Ltd v Beavis [2016] AC 1172** and submits that they do not need to suffer a financial loss. Lord Neuberger at paragraph 99 stated that:

"The reason is that although ParkingEye was not liable to suffer loss as a result of overstayng motorists, it had a legitimate interest in charging them which extended beyond the recovery of any loss. The scheme in operation here (and in many similar car parks) is that the landowner authorises ParkingEye to control access to the car park and to impose the agreed charges, with a view to managing the car park in the interests of the retail outlets, their customers and the public at large."

Summary

which reference was made on the Notices and to which the Claimant still belongs. The IPC code of practice is a detailed code of regulation governing signs, charges and enforcement. Schedule 5 deals with Parking Charges and provides that "it is suggested the maximum parking charge should be £100.00".

38. The Claimant submits that £100.00 for a Parking Charge is not an extortionate sum at all, but in line with the recommendation provided by the IPC.

39. The £60.00 is for the debt recovery charge. The Claimant refers to the IPC Code of Practice Part E Schedule 5- Parking Charges which states the following:

"Where a Parking Charge becomes overdue a reasonable sum may be added. This sum must not exceed £60 (inclusive of VAT where applicable) unless Court Proceedings have been initiated."

40. The Claimant submits that the debt recovery charge included within the Claim does not exceed £60.00 and therefore is in accordance with the IPC Code of Practice. The £25.00 is the Court fee.

41. The Claimant submits that the Particulars of Claim endorsed within the Claim Form provided the Defendant with sufficient details of the Claim to be able to prepare a full Defence to the Claim made against him.

42. As the Claim was issued online using Money Claim Online (MCOL), under Paragraph 4 (1) PD 7E- MCOL, the Claimant's Claim meets the conditions for starting a Claim using MCOL. Under Paragraphs 5.2(1) and (2)(b) PD 7E, the Claimant's Particulars of Claim were included in the online Claim Form, however, they had to comply with the restrictions of having only 1080 characters to set out its Particulars.

43. The Claimant relies on Paragraph 5.2A PD 7E which states: "The requirement in paragraph 7.3 of Practice Direction 16 for documents to be attached to the particulars of contract claims does not apply to claims started using an online

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

49. 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".

50. 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.

51. 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. 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.

Date: 6th November 2020

Sign: *A. Arshad*

Ambreen Arshad
Paralegal
For and on behalf of Excel Parking Services Limited