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IN THE SOUTHAMPTON COUNTY COURT

No. F0DP806M  
F0DP201T

Courts of Justice  
London Road, Southampton

Monday, 11 November 2019

Before:

DISTRICT JUDGE GRAND

B E T W E E N :

BRITANNIA PARKING GROUP LTD

Claimant

- and -

(1)

(2) CHRIS CROSBY

Defendants

MR H. MAINWARING (instructed by Messrs BW Law) appeared on behalf of the Claimant.

The First Defendant appeared in person.

MRS REEVES appeared on behalf of the Second Defendant.

*[Transcript produced from poor quality audio recording – one channel working out of two]*

**J U D G M E N T**



THE DISTRICT JUDGE:

- 1 I have two applications before me in two sets of proceedings although the applications are essentially the same. Both sets of proceedings were before District Judge Taylor in May of this year. They are both claims by Britannia Parking Group Ltd trading as Britannia Parking, one against Mr Chris Crosby and the other against Mr. Both relate to parking penalty charge notices issued against the respective defendants and both include in the claim a claim that is expressed in the claim form as a claim for £60 additional expenses pursuant to PCN terms and conditions.
- 2 In response to both matters a defence has been put in – the defences are not identical – and the matter came before District Judge Taylor in box work for consideration with directions questionnaires, the matters having been transferred out of the money claims centre. In both matters he struck out the claims as an abuse of process, the reasons given being that the claimant claims a substantial charge additional to the parking charge, which it is alleged the defendants failed to pay; and that the additional charge is not recoverable under the Protection of Freedoms Act 2012 Schedule 4 nor with reference to the judgment in *Parking Eye v Beavis*; and that it is an abuse of process for the claimant to issue a knowingly inflated claim for an additional sum which it is not entitled to recover.
- 3 Of course it also contained a notice pursuant to rule 3.3 that either party has the right to apply and that is exactly what the claimant has done in both cases. They have applied for District Judge Taylor's order to be set aside and for directions to be given. In support of that, I have the statement of Colin Brown and a second statement from Colin Brown and I have had skeleton arguments today from Mr Mainwaring, counsel who appears on behalf of the claimant, and Mrs Reeves who is the lay representative for Mr Crosby.
- 4 I have heard submissions from Mr Mainwaring, Mrs Reeves, and also very briefly from Mr. who takes a very different position from Mr Crosby. I think it is probably fair to describe him today as almost a spectator in that he raised a defence under the Bills of Exchange Act but does not contest the parking charge and does not really resist the claimant's application.
- 5 What I should also mention is that when the claimant submitted its application, it requested that it be placed in front of a circuit judge. His Honour Judge Hughes QC is the designated civil judge for this area. He directed that the matter be listed with a time estimate of 30 minutes before a full time district judge which is what it has been, although it has overrun its time estimate. The skeleton arguments, with which I have been provided, can only be described as very full.
- 6 All these parking cases now operate under the shadow of the Supreme Court decision of *Parking Eye v Beavis*. Prior to the Supreme Court's decision in *Parking Eye v Beavis* there was litigation going on up and down the country around all sorts of issues which were raised by defendants but resisted by parking companies. The bringing of the case before the Supreme Court --- maybe I should not say it was intended to provide a definitive answer to the issues being raised, but certainly it was the hope that the decisions which were being made by the courts up and down the country would become very much simpler as a result of the matter going to the highest court in the land and that court giving a judgment. The charge in that case (*Beavis*) was £85. One may say it was disproportionate for such a case to go to the Supreme Court but the volume of cases and the amounts of money involved overall, led to that happening. Those challenging parking charges were to be disappointed

by the decision of the Supreme Court which essentially decided that the parking charges were not a penalty. They did that after careful consideration, and a lengthy case report of the judgments given was released.

- 7 So it is against that background that we have this case before us. What the Supreme Court decided was that the charge of £85 as a parking charge was reasonable and acceptable, lawful, legitimate and entirely defensible and appropriate within the scheme of the regime of parking charges.
- 8 The reason District Judge Taylor gave for striking out the claim in this case is that there is an additional substantial charge which the claimant in this case is seeking to make. He is criticised for giving very brief reasons for the strike out but in fact his reasons are substantially longer than the original particulars of claim which set out the additional parking charge of £60.
- 9 It seems to me that there are two issues here; first of all, whether it is appropriate for the additional charge to be struck out and then, secondly, whether the striking out should take with it the whole of the claim or whether the court should strike out the £60 charge and leave outstanding the £100 charge which is within the bounds of what the Supreme Court considered reasonable in *Parking Eye v Beavis*.
- 10 Mr Mainwaring on behalf of the claimant says that this is more a matter for evidence or substantial consideration at trial whereas Mrs Reeves on behalf of Mr Crosby cites a number of paragraphs from the *Beavis* judgment, suggesting that the Supreme Court decided that the charge of £85 for overstaying in a car park was reasonable but higher charges were not to be.
- 11 It is difficult to do justice to absolutely everything which has been put before me in the skeleton arguments and the submissions today but I will deal with them, I hope, as clearly and as briefly as I can.
- 12 Reference is made by the Claimant to the guidance provided by the British Parking Association (and the British Parking Association code of practice was referred to in the Supreme Court decision of *Parking Eye v Beavis*). That judgment also refers to the statutory instrument which sets out what local authorities may charge by way of parking charges. It does seem to me that the Supreme Court gives a somewhat uncritical consideration of the BPA Code of Practice, in that the BPA is an association of parking companies. The guidance is produced by parking companies for parking companies largely for their own benefit. They refer to the fact that there is only one such association. So when the claimant asks me to look at the BPA Code of Practice, which says that a £60 charge is a reasonable charge to make, I treat it with massive scepticism because it seems to me that it is entirely self-serving for the British Parking Association to give guidance to parking companies of what are appropriate additional charges. I have much greater respect as I should to the Supreme Court decision about what is reasonable.
- 13 I was taken by Mrs Reeves in her submissions to para.98 of *Beavis* where it is explained why the £85 charge is reasonable. It says that it has two main objectives; one is to manage the efficient use of parking spaces and this was to be achieved by deterring commuters or other long-stay motorists from occupying parking spaces for long periods. The other purpose was to provide an income stream to enable Parking Eye to meet the costs of operating the scheme and make a profit from its services. The judgment goes on at para.193 to say that the scheme also covered Parking Eye's costs of operation and gave their shareholders a healthy annual profit.

14 And again at para.198:

“The charge has to be and is set at a level which enables the managers to recover the costs of operating the scheme. It is here also set at a level enabling Parking Eye to make a profit.

15 It seems to me absolutely clear from the Supreme Court judgment that what they were determining was what a reasonable charge was in the context of running these parking schemes. Some people will stay within the rules and will pay nothing or pay a small charge. Others will overstay and will pay much larger charges which the Supreme Court has found to be a proportionate and reasonable penalty. The Supreme Court considered a charge of £85 and determined that that is not an unacceptable charge.

16 What we have here is essentially a charge of £160 for parking although the advertised figure for the charge on the signage is £100. The £60 is based on the vague additional sentence on the sign saying that there may be other charges. The particulars of claim then refer to this almost as an afterthought in that it comes as the last line after reference to the claim for interest. The claim form says it is £60 for contractual costs pursuant to the PCN and the terms and conditions. It seems to me that that the £60 charge is quite transparently an attempt to gild the lily, to garnish the margin of what is provided in the Supreme Court decision of *Beavis* as to what is a reasonable charge in the circumstances and, to use District Judge Taylor’s words, it is an inflated charge.

17 It has been suggested to me by Mr Mainwaring that somehow it is an additional charge for additional expenses which are caused by people who do not pay. The Supreme Court was concerned with a case of somebody who did not pay. This was the whole nub of what the case was about and it does not seem to me that it is appropriate for the parking companies, having won in the case of *Beavis* decided by the Supreme Court for the reasons given then to try to add on an additional charge.

18 It seems to me that it is absolutely clear from the Supreme Court decision that the intention was not for parking schemes to make charges for overstayers that amount to £160 or for there be one charge and then another substantial charge. Therefore what the claimant is seeking to do in this case is to charge far more to somebody who does not comply with the parking terms than was approved by the Supreme Court in *Beavis*. It does seem to me that the additional sum charged is unlawful.

19 I should mention that Mrs Reeves has raised before me the Consumer Rights Act and the court’s responsibility under s71 to consider potentially unfair terms even if the issue is not raised by any of the parties. Mrs Reeves sought to take me to the Act and she has identified to me the three examples in schedule to the Act which she says makes this additional charge unfair. It is Schedule 2 to the Act which gives the examples of terms which may be regarded as unfair. Mrs Reeves refers to examples 6, 10 and 14. I have to say that it seems to me that Mrs Reeves is right to refer to them and even if I had not been with her on the question of the parking fine it does seem to me that these charges are unfair terms in that they fit the three examples of unfair terms.. The reference on the signs to charges seems to me simply to leave entirely to the discretion of the parking company what additional charges they may levy and is completely against the intention of the Consumer Rights Act legislation and the question of what terms are fair.

20 Example term 14 says:

“A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound.”

- 21 That is bang on. It does not say that there will be an additional charge of £60. It just vaguely refers to further charges.
- 22 I further say that the charge of £60 on a parking charge of £100 is 60 per cent which is disproportionate. So, I find that the charge falls foul of the decision of *Beavis*, it falls foul of the unfair contract terms provisions of the Consumer Rights Act and it is quite clearly not a lawful charge.
- 23 It follows from that that I must come to consider whether striking out the whole claim is appropriate. The inclusion of the additional £60 charge is an attempt to go beyond the decision in *Parking Eye v Beavis* about what is reasonable and so not a penalty. The whole claim is tainted by it. Even if one treats it as separate from the parking charge, the claimant should have well known that it is not a charge which is lawful. The very fact that they bring a claim in these circumstances, it seems to me is an abuse of the process of the court. In saying that, I observe that with any claim which is put before the court, if a party does not put in a defence to the claim, then it is open to the claimant to enter a default judgment. I have no information about the numbers but I do not doubt that many default judgments are entered in cases containing these additional charges and the claimant then has the benefit of those judgments, including, as they do, additional charges which I have found to be unlawful. That reinforces why it is abusive to include unlawful additional charges in these claims.
- 24 So I conclude by saying that I dismiss the application to set aside District Judge Taylor's order.
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**CERTIFICATE**

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\*\* This transcript has been approved by the Judge \*\*