Exhibit SP3

IN THE COUNTY COURT AT HIGH WYCOMBE

Case No: D9QZ9E8Q

The Law Courts
Ground Floor
Easton Street
High Wycombe
HP11 1LR

Thursday, 31st May 2018

Before:
DISTRICT JUDGE JONES

B E T W E E N:

SIMON CLAY

v

1) CIVIL ENFORCEMENT LIMITED
2) FUSION LIFESTYLE

MR CAROD[?] appeared on behalf of the Claimant
MR RITCHIE appeared on behalf of the Defendants

JUDGMENT
(Approved)

DJ JONES:

1. This is a claim brought by Simon Paul Clay represented today by Mr Carood[, assisted by Mr Beavis, against the defendants, who are two organisations: Civil Enforcement Ltd and Fusion Lifestyle, also Limited I think, represented today by Mr Ritchie. The claim, as originally pleaded, was for a sum of £250 damages for breach of the Data Protection Act 1998, as set out within a protocol letter before claim served on 16 January of last year.
2. The essence of the claim of breach of the Act derives from the management and administration of a carpark, which it is accepted Mr Clay used on the relevant occasion. As a consequence of that use, and an allegation made by the defendants that he had infringed the terms upon which he was permitted to use the carpark, the first defendants, who are Civil Enforcement Ltd, invoked the procedures available within the Protection of Freedoms Act of 2012, Schedule 4 open the procedural gateway which is available to them under that Schedule if the enforcement operators are unable to identify the driver of the vehicle, to request information from the DVLA as to the identity of the registered keeper of the vehicle, which then permits enforcement of any parking charge against the registered keeper where the driver of the vehicle is unknown.
3. In taking those procedural steps the first defendant made the request to the DVLA for the identity of the registered keeper of Mr Clay's vehicle to be provided to them. The information was duly given by the DVLA. Mr Clay says that that information was wrongly obtained and in breach of the Data Protection Act because Civil Enforcement Ltd are not able to establish that they had the requisite authority to so act from the owner of the land on which the carpark was situated. Therefore, if they did not have that requisite authority, they had no right to seek, under the Act, the private information about Mr Clay's ownership of the vehicle in question.
4. I should add, at this stage, that as may be apparent from the identity of the parties, it is Mr Clay who brings the proceedings and not the parking enforcement agency, so this is not a case where Mr Clay has been sued in respect of outstanding charges. No such enforcement action has been taken by those who may be entitled to bring such a claim. This is simply a situation where Mr Clay was pursued by the first defendant in respect of their contention that he had infringed the terms and conditions of parking on this particular site. Notwithstanding their pursuit of him in that way, pre-proceedings, they did not then go on to institute proceedings for recovery of the alleged excess parking charges.
5. Therefore, on the basis that it is Mr Clay who brings the proceedings, then of course the usual rules in respect of the burden and standard of proof apply. The burden of proof is upon the person who brings the proceedings; that is Mr Clay. He must prove, on balance of probabilities, that what he says is established as more likely than not. The defendants do not have to prove anything as a matter of general principles.
6. When the claim came for consideration before District Judge Perry, at this court on 17 January 2018, very helpful documentation had been prepared by both Mr Carood and Mr Beavis on behalf of Mr Clay, and also by Mr Ritchie on behalf of the defendants. Those documents provided clear and insightful expositions of the legislation and regulatory framework, in respect of these sorts of parking actions. They also provided very helpful information about the scheme established by the Data Protection Act and the possible breaches that there may have been in circumstances where, as alleged, a defendant such as Civil Enforcement Ltd obtains private information about an individual under the statute when they had no authorisation so to do.
7. As a consequence of the submissions provided by both sides, the learned judge set out in his

very clear order the following recitals. Firstly, that the parties had identified between them that the issue, (in other words the central and only issue for further determination), was the entitlement of the first defendant to enforce parking charges for the 'relevant land', (a term of art which derives from the legislation on behalf of the landowners). Judge Perry further recited that he was satisfied that he needed to direct production of further evidence in order to determine that issue. There was then an undertaking that whatever was produced would not be disclosed beyond the boundaries of these proceedings and the learned judge therefore adjourned the trial to today and directed at paragraph two of his order that:

> 'The defendant shall disclose to the claimant, by 9 February, *documentary* evidence of their contract entitling them to enforce parking charges for the relevant land, by themselves or any subcontractor, which (documentation) may be redacted as to any confidential information'.

8. It is plain, in my judgement, that Judge Perry was persuaded by the submissions of both parties that there needed to be further documentary evidence to permit him to determine or as it turns out to permit me to determine the issue of authorisation.
9. The defendants complied by providing three separate documents. The first is one dated 8 April 2013 made between Fusion Lifestyle the second defendants and an organisation known as Creative, who also appear elsewhere as Creative Car Parks Ltd. It contains a clause at paragraph 3.7 which says that, 'The company', (Fusion), 'has the absolute right to assign the benefit of that agreement and may subcontract any enforcement of it or may instruct Creative Car Park Ltd, Civil Enforcement Ltd', (the first defendant), 'or any other company if it chooses to enforce the parking system and enforcement policy'. Therefore, says Mr Richie, that is the first indicator of authority from the second defendant through the Creative, which may create the power to trickle down the authority to enforce between Creative and such other company as they think appropriate as set out within clause 3.7.
10. Then there is a further document, dated 1 April 2016, again between Fusion Lifestyle and Creative, which relates to the relevant carpark at Wycombe and contains the identical clause as clause 3.7, about the rights and some of the benefits of the agreement, including to 'Instruct Creative Civil Enforcement or any company it chooses to operate the parking and enforcement policy'.
11. Those two documents are helpful in that they plainly show that Fusion Lifestyle had entered into a contractual relationship with Creative in order to provide a scheme for parking management in respect of this particular carpark. Alongside those documents, the defendants produced a document which is headed, 'Supply of Services Contract', between Creative Contracts Car Park Ltd, trading as Creative, thereby creating to the link between the first two contracts I have described and this one, and as the other contracting party, Civil Enforcement Ltd. The recitals within the agreement set out that Creative provides carpark management services and Creative wishes to appoint CEL to conduct those services in respect of enforcement of parking restrictions at carparks.
12. There are then some definition clauses with some redactions followed by some further contractual provisions, again with a redaction which must relate to commercially sensitive information because it falls under the charges and payments subcategory. The definitions and interpretations section by contrast could not possibly contain, in my judgement, sensitive information, so I am unsure as to why that section has been redacted. However, most importantly what has also been redacted within that document are the signatures of Creative and Civil Enforcement Ltd and most importantly, says the claimant, the date upon which that arrangement was concluded.
13. As such, based on that analysis I accept the submission made by the claimant that the

documentation provided does not show that the benefit of the two initial contracts between Fusion Lifestyle and Creative have been assigned or subcontracted, or that Civil has been instructed by Creative to carry out services on their behalf at the relevant time prior to the issue which arose in respect of the alleged infringement by Mr Clay leading to the subsequent attempts by Civil to secure payment of the excess parking charges levied in respect thereof.

14. I return to the order of Judge Perry. It is plain that what the learned judge contemplated, and set out in his careful order, was that the defendant needed to produce documentary evidence that the right to assign, sublet or instruct under 3.7 had actually been properly transmitted to Civil, opening the way for them to seek disclosure of private information about Mr Clay from the DVLA.

15. The response to the contention that the documentary information does not provide what the judge had directed from Mr Richie's is that they need not do that in any event. Firstly, he says that they do not rely upon the supply of services contract, which I have described as the third document, and therefore do not need to provide me with an unredacted version in order that I can ascertain whether there is any relevance in the redacted material, and to identify what the date of the document was. Put simply, Mr Ritchie says, he does not need to rely upon that document because he can persuade me by other evidence that CEL were appropriately authorised by Creative to enforce charges in respect of this carpark.

16. He concedes that it is likely that if the dates of the services contract was available it would post-date this instance of attempted by Civil and therefore the document would not avail his clients. Therefore, in substitution for that documentary evidence Mr Ritchie submits there are other sources which will allow him to persuade me that the defendant was duly authorised to enforce and to request this private information. Those sources are the signage in and around the carpark which bears the name amongst others of Civil Enforcement Ltd, the fact that subsequent to the alleged infringement they engaged in correspondence with Mr Clay in respect of it and to all intents and purposes conducted themselves as a body who had authority to enforce these parking charges. As a consequence Mr Ritchie submits that it is self-evident from the way in which Civil conducted themselves that they must have been authorised at the relevant time otherwise he asks on what basis could they possibly have assumed the authority for parking management at this site, if they were not so authorised?

17. The difficulty with that submission, in my judgement, is firstly that that was not what was contemplated by Judge Perry, and I find from the way in which his order was framed that no objection was raised on behalf of the defendants to the proposition that in order to establish this issue to the required standard that documentary evidence of authority needed to be produced. It is clear, if the defendants at that stage was simply seeking to rely upon inferential evidence they would have said to the learned judge, 'Well, there is no need for us to produce anything because we can persuade you by other material beyond the documents in the case'. I find it unlikely that issue was raised at that stage. Secondly, the fact that the defendants actually disclosed a document between Creative and Civil was, in my judgement, their attempt to demonstrate that there was the required written authority in order to establish the issue which the judge had identified as being the central one in the case.

18. As it transpires, based on what I am told, that document does nothing of the sort because its date, if it was revealed I am told by Mr Ritchie, would demonstrate that there was not any existing written agreement prior to the date of the alleged infringement which involved Mr Clay. Therefore, he says what I can find in respect of the period which pre-dates the written agreement is, again, the inferential conclusion that Civil must have been authorised because they conducted themselves in a way which suggests that they were so

authorised. That submission, in my judgement, begs as many questions as it answers because if everyone was quite content with the arrangements for authorisation of Civil, why on earth would they bother to have committed to writing, as they did, in the post-infringement document. If the previous arrangements between Creative and Civil were sufficient then the document would have been otiose and would have served no particular purpose. Therefore, as I have said more questions arise than were answered by that particular submission.

19. The claimant submits that in order to pursue charges and obtain the requisite information these sorts of operators are required to comply with their Trade Association Code of Practice, as is set out within paragraph 13 of the amended particulars of claim. Paragraph 13 goes on to say that the Trade Association is the British Parking Association and their Code of Practice, which is said must be followed, sets out at paragraph 7(1), 7(2) and 7(3) that, 'Private operators must have the written permission of the landowner in order to issue and enforce parking charges'.

20. That part of the pleading derives its force from, in particular, paragraph 7.1 of the code which says:

> 'If you do not own the land on which you are carrying out parking management you must have that written authorisation of the landowner, or their appointed agent. The written confirmation must be given **before** you can start operating on the land in question and give you the authority to carry out all aspects of carpark management for the site that you are responsible for. In particular it must say that the landowner, or their appointed agent, requires you to keep to the Code of Practice and that you have the authority to pursue outstanding parking charges'. (emphasis added).

21. That makes it abundantly clear as to the necessity for written consent, in compliance with the code itself. That code whilst not statutory was given further force in Neuberger J's judgment in the seminal authority of *Parking Eye Limited* v Beavis [2015] UKSC 67 where at paragraphs 95 and 96 His Lordship referred to the need for compliance with the Code of Conduct in order for parking operators to obtain data from the DVLA.

22. Joining the dots between those various parts of the evidence I come to the conclusion, on balance of probabilities, that it is established that at the relevant time that the first defendant did not have any written agreement with Creative, who were the holders of derivative authority from the landowner, in order to issue and enforce parking charges. Such is clear from the defendants' inability to provide the required documentary evidence which Judge Perry felt was central to the determination of this claim.

23. On that basis that the claimants have established the absence of written permission then I further find, in the absence of that evidence, that the first Defendant did not have the requisite authority to seek the information about who was the registered keeper of Mr Clay's vehicle. In those circumstances it is accepted by both sides there was a breach of the Data Protection Act, which requires compliance with the strict provisions of the Protection of Freedoms Act before that information can be requisitioned by a third party.

24. As such I find that the claimant succeeds in his claim, given that he has established all the requisite elements of it to the required standard. The claim can only succeed, in my judgement, against the first defendant. It is not proved that Fusion Lifestyle have breached the provisions of the Data Protection Act. They have acted, in my judgement, lawfully in giving authority to others which is permitted within the scheme of parking regulation. The breach of the DPA derives from the unauthorised commissioning of the private information by the first defendant alone.

25. That leads to the issue of remedy. It is pleaded within the claim that the claimant seeks

£250 which is said to be an appropriate amount to compensate him for the issues which arise in terms of distress and so on as a consequence of the unauthorised obtaining of Mr Clay's private information. Two authorities have been referred to by Mr Carood in support of his contention that £250 is an appropriate figure. Those authorities are *Vidal-Hall v Google, Inc.* [2015] EWCA Civ and *Halliday v Creation Consumer Finance* [2013] EWCA Civ 333. *Vidal-Hall v Google, Inc.* was a claim against Google where, without consent Google took photographs of Mr Vidal-Hall's home. In *Halliday v Creation Consumer Finance*, again in breach of the DPA, information was obtained about one of its members, Ms Halliday, which information was disseminated, as were the photographs in *Vidal-Hall v Google, Inc* to third parties. Therefore Mr Ritchie, rightly in my judgement, distinguishes those cases from this case given that there was no dissemination of this information about Mr Clay and even if there had been I find it is unlikely that the fact that Mr Clay was the registered keeper of the motor vehicle would have been information that he would have felt, in some way, prejudiced his position in society if third parties came to the knowledge that he owned that motor vehicle.

26. There is a further significant difference between the authorities and this claim. In the authorities the Claimants received awards in the order of £750 and Mr Carood therefore submits that this case is plainly not the same and consequently damages will need to be adjusted to be a reasonable and appropriate figure, namely £250'.

27. Mr Ritchie counters that submission by saying, in these circumstances, nothing worse than what ordinary members of the public face on a fairly regular basis has befallen Mr Clay. He has had to deal with correspondence from the first defendant seeking to enforce what they say were appropriately levied excess parking charges, and those are the sorts of things, Mr Ritchie says, that we all have to deal with on a daily basis. We all face, at times he submits, claims from others.

28. I am not convinced that he is right in that respect. I think many people are able to go through life without being pursued in the way that these claims are pursued. I therefore find, as a matter of fact, based on my knowledge of the approach which is taken and the volume of correspondence which can be generated that the persistence of the enforcement agencies can certainly cause inconvenience and, in some instances, distress given the way in which the letters seeking payment are framed. The fact that there is an increasing scale of charges which are levied is also an element that I take into account in assessing an appropriate measure of damages.

29. Mr Ritchie goes on from his first submission in that respect to say therefore, on the basis that we should be able to manage these issues as part and parcel of modern day life that even if I came to the conclusion, as I have, that there was breach that I should not make any compensatory award given that it cannot be established that inconvenience and distress would have flowed from the breach.

30. I reject that submission. I think the fact that there has been a breach must cause some inconvenience and that has to be reflected, not only in my finding of breach but also in some award for Mr Clay in respect of the consequences of him being pursued in the way that he was when the first defendant was not authorised to do so. In those circumstances therefore I find that an appropriate award is one which is significantly less than that within the two authorities I have mentioned. The right amount, in my judgement, is an award of £200, which I will say should be paid within 14 days.

End of Judgment

Exhibit SP3

Transcript from a recording by Ubiqus
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