

ORDER In the Manchester County Court
District Judge Iyer

Case number:
C7GF6E3R

Parties	Pace Recovery And Storage Ltd	Claimant
	Zoltan Lengyel	Defendant

Warning: You must comply with the terms imposed upon you by this order otherwise your case is liable to be struck out or some other sanction imposed. If you cannot comply you are expected to make formal application to the court before any deadline imposed upon you expires.

On 24 May 2017

Before District Judge Iyer at the Civil Justice Centre, Manchester without a hearing/at a paper hearing under CPR 27.9

IT WAS ORDERED that:

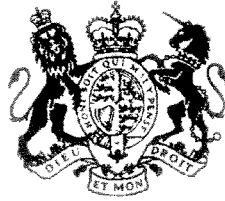
The Claimant's claim against the Defendant is dismissed for the reasons in the attached judgment.

STAFF

A copy of this order has been emailed to manchestercountyorders@hmcts.gsi.gov.uk under the filename as below. It should be received (at the latest) by the morning after the date when the order was made. If you have not received it or if you have any questions, please inform District Judge Iyer ASAP.

Pace Recovery And Storage Ltd v Zoltan Lengyel (24.05.2017).docx

NOTES (not part of order)



IN THE COUNTY COURT (MANCHESTER) CASE NUMBER: C7GF6E3R

BETWEEN

PACE RECOVERY AND STORAGE LTD CLAIMANT

AND

ZOLTAN LENGYEL DEFENDANT

JUDGMENT

1. This is a claim for unpaid parking charges under Schedule 4 to the Protection of Freedoms Act 2012. It has been allocated to the Small Claims Track and the parties have agreed that I should deal with it without a hearing, under CPR 27.9.
2. On 21 April 2016, the Defendant parked his vehicle, a hired motor car, in the Fleming Road Car Park, London SE17 3QY. He did not display a permit to park.
3. The Claimant, which manages the car park, considered that the Defendant had breached their terms and conditions and sent a parking charge notice to the hire company, which was passed onto the Defendant.
4. Paragraphs 13 to 14 of Schedule 4 allow a parking company to recover unpaid parking charges from the hirer of a vehicle, where “the driver of a vehicle is required by virtue of a relevant obligation to pay parking charges in respect of the parking of the vehicle on relevant land” and “those charges have not been paid in full”: par. 1(1).

5. By virtue of par. 1(2):
 - a. A “relevant obligation” means “an obligation arising under the terms of a relevant contract” or, “where there is no relevant contract, as a result of a trespass or other tort committed by parking the vehicle on the relevant land”. For the purposes of this claim, the Claimant relies on a “relevant contract”.
 - b. A “relevant contract” means “a contract (including a contract arising only when the vehicle was parked on the relevant land) between the driver and a person who is - (a) the owner or occupier of the land, or (b) authorised, under or by virtue of arrangements made by the owner or occupier of the land, to enter into a contract with the driver requiring the payment of parking charges in respect of the parking of the vehicle on the land”.
6. I must therefore be satisfied that:
 - a. The Claimant had the authority of the owner or occupier of the site to enter into contracts with people who parked their cars in the car park.
 - b. The Claimant and the Defendant entered into such a contract.
 - c. It was a valid and enforceable contract.
7. If I am satisfied of these, I must further be satisfied that the Defendant was in breach of the terms of the contract to display a permit, though this is admitted, subject to the other requirements.
8. The Claimant has produced, as an exhibit to the witness statement of Michael Charman, its Director, a two-page agreement dated 13 September 2012 with Westcott (Southwark) Management Co. Ltd (“Westcott”) which gives the Claimant:

... authority to begin issuing charge notices to vehicle parked without our authority from the start date [1 October 2012]

The agreement appears to have been drafted by the Claimant, and, in accordance with the “*contra proferentem*” rule, I must interpret any ambiguity against the Claimant.

9. This raises the first concern, which is that the language of this agreement does not specifically permit the Claimant to enter into contracts with drivers.
 - a. The agreement merely authorises the Claimant to “*issue charge notices*”, which is quite different from “[*entering*] into a contract with the driver”.
 - b. The Claimant is not given the power to *authorise* parking, since that clearly remains vested in Westcott, by virtue of the words “*parked without our authority*”. Without the power to authorise parking, the Claimant is unable to provide any contractual benefit to a driver.

I consider that the agreement amounts to nothing more than an agency agreement that allows the Claimant to issue charge notices *on behalf of* Westcott (which would be for Westcott to sue upon) but no more.

10. The second concern is about whether, even if I am wrong in the above, the Claimant *did* enter into a contract with the Defendant. Such a contract would be one which allowed the Defendant to park in the car park on the display of a valid permit. As this would be a consumer contract, it must be “fair”: s. 62 of the Consumer Rights Act 2015. As the Supreme Court held in *ParkingEye Ltd v Beavis* [2013] EWCA Civ 1539 and [2015] EWCA Civ 402, the concept of fairness requires the parking firm to comply with the requirements of the relevant code of practice, being either the British Parking Association’s code or the International Parking Committee’s code.

11. Par. 18.2 of the former provides:

Entrance signs play an important part in establishing a parking contract and deterring trespassers. Therefore, as well as the signs you must have telling drivers about the terms and conditions for parking, you must also have a standard form of entrance sign at the entrance to the parking area.

Park 28.1 provides:

A driver who uses your private car park with your permission does so under a licence or contract with you. If they park without your permission this will usually be an act of trespass. In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.

Par. 2 of Part B of the latter provides:

2.1 Where the basis of your parking charges is based in the law of contract it will usually be by way of the driver of a vehicle agreeing to contractual terms identified by signage in and around a controlled zone. It is therefore of fundamental importance that the signage meets the minimum standards under The Code as this underpins the validity of any such charge.

2.2 Signs must conform to the requirements as set out in a schedule 1 to the Code.

The recommended sign has a large image of the letter "P" with the words "Pay and Display" under it, though this can be adapted to different situations.

Part E states that such signs must:

Have clear and intelligible wording and be designed such that it is clear to the reasonable driver that he is entering into a contract with the creditor or committing a trespass as the case may be;

It is an important element of both of these that the signs inform the driver that he is entering into a contract with the Claimant.

12. The Claimant's sign has a large box with the words:

WARNING PRIVATE LAND

24 Hour Enforcement Zone

This site is managed and operated by Ace Security Services

Terms and Conditions

Vehicles must display a valid permit prominently and comply with any conditions on that permit;

Vehicles must not cause an obstruction to roadways, other road users, emergency access areas or bin areas.

The driver, by breaching any of the above Terms and Conditions while parking or remaining on this land, accepts liability for a

Charge of £100

Payable within 28 days of issue. A driver who uses your private car park with your permission does so under a licence or contract with you. If they park without your permission this will usually be an act of trespass. In all cases, the driver's use of your land will be governed by your terms and conditions, which the driver should be made aware of from the start. You must use signs to make it easy for them to find out what your terms and conditions are.

13. Nowhere within this sign does it inform the reader that by parking in the car park, he is entering into a contract with the Claimant. Indeed, the words “contract” or “agreement” do not appear at all within the sign, which merely refers to the driver “accepting liability for a charge”. The phrase “terms and conditions” are not synonymous with a contract. Further, the opening words of the sign appear to be designed more to ward off trespassers than to enter into a contract with the driver. In the circumstances, I consider that the Defendant did not enter into a contract with the Claimant by parking his vehicle in the car park.
14. The third concern is that, even if I am wrong about the Claimant’s authority and the sufficiency of the signage to advise drivers that they are entering into a contract with the Claimant, the contract requires the driver to display a parking permit, which is something that the Defendant says that he could not do, because he was visiting a resident of the apartments, Mr. Villon, who the Defendant says “was informed that his apartment was not one of those eligible for a parking permit” (par. 5 of the Defendant’s witness statement). Mr. Villon has produced his own witness statement verifying this. Insofar as the Claimant’s

Mr. Charman's evidence suggests that Mr. Villon was provided with a permit, no details are offered, I note that the Claimant is not the company which distributes these, there is no evidence from Westcott that it gave Mr. Villon a permit, and I accept that no such permit was provided to him.

15. The consequence of this is that any contract between the Claimant and the Defendant required the Defendant to do something which he simply could not do, that is, display a permit. His inability to do this was not caused by any act or omission by the Defendant but by a state of affairs over which he had no control. Indeed, it must have been obvious to the Claimant that if it erected a sign proving that it was a term of the contract that the driver of any parked vehicle displays a permit, it must have known in advance that many drivers would simply be unable to do this. Therefore, insofar as there was any contract between the parties, it was invalid under the doctrine of impossibility of performance.
16. It may be that the Claimant's claim may have more properly been phrased in trespass than in breach of contract but that is not something about which I need to speculate, since it is not the Claimant's case that the Defendant is liable as a trespasser.
17. For these reasons, the Claimant's claim against the Defendant fails and is dismissed.

District Judge Iyer
Manchester
24 May 2017