

Case No: 3QT62646

**IN THE BRENTFORD COUNTY COURT**

Alexandra Road  
High Street  
Brentford  
TW8 0JJ

23<sup>rd</sup> October 2013

B E F O R E:

**DISTRICT JUDGE JENKINS**

**PARKINGEYE LTD**

**Claimant**

**v**

**ANITA SHARMA**

**Defendant**

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**Hearing**

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No. of folios in transcript: 35  
No. of words in transcript: 2,499

1. **District Judge Jenkins :** Right come along in Mr Lada. Mr Kerridge, you are here to act as a Mackenzie Friend is that right?
2. **Mr Kerridge :** That's right Sir.
3. **District Judge Jenkins :** And you understand your role as a Mackenzie Friend which is to assist Mrs Sharma in the presentation of her case?
4. **Mr Kerridge :** Well I would say as a lay representative to present the case on her behalf yes.
5. **District Judge Jenkins :** So you are not here as a Mackenzie Friend?
6. **Mr Kerridge :** I am here as a lay representative.
7. **District Judge Jenkins :** Right okay and what is your ... on what basis has she asked you to be here?
8. **Mr Kerridge :** When all this arose originally she asked me to help her with her defence which I helped to prepare and as she doesn't really have much of an understanding of the issues involved or the legal procedures I offered to help her in court today.
9. **District Judge Jenkins :** And so why do you have a better understanding of the legal procedures than she does?
10. **Mr Kerridge :** I have been involved in these sorts of cases so many times before Sir.
11. **District Judge Jenkins :** Right so she wasn't known to you, you weren't known to her before?
12. **Mr Kerridge :** I was known to a friend of hers and she introduced me to Miss Sharma.
13. **District Judge Jenkins :** Okay well I will allow it but of course in terms of any evidence it is Mrs Sharma I want to explain all the circumstances to me.
14. **Mr Kerridge :** Of course.
15. **District Judge Jenkins :** Okay thank you Mr Lada can you help me with one thing?
16. **Mr Lada :** Sir yes.
17. **District Judge Jenkins :** Who owns the land on which this parking took place?
18. **Mr Lada :** There is a contract, it's Euro Garages Limited is the name of the entity that is the land owner.
19. **District Judge Jenkins :** But who owns the land?

20. **Mr Lada :** That is Euro Garages Limited.
21. **District Judge Jenkins :** Right so why haven't they brought the claim?
22. **Mr Lada :** Sir if I can just refer you to the contract which was in place ...
23. **District Judge Jenkins :** Well the contract between whom?
24. **Mr Lada :** ... essentially ParkingEye are managers of the car park and there is a contract for them to manage the car park and in that contract ...
25. **District Judge Jenkins :** I'm sure that's right but that as a matter of law ...
26. **Mr Lada :** Yes.
27. **District Judge Jenkins :** ... they can have all the contracts they like surely, but that doesn't entitle them to bring a claim in their name for which they have no entitlement?
28. **Mr Lada :** Sir as I was saying the ParkingEye themselves have a contractual obligation in which they can bring legal proceedings on behalf of the land owner and they act on behalf of the land owner.
29. **District Judge Jenkins :** But they haven't done that, they brought proceedings for themselves?
30. **Mr Lada :** Yes because they are in charge of managing the car park and they ...
31. **District Judge Jenkins :** They may well be but what is their entitlement as against Mrs Sharma to this money?
32. **Mr Lada :** ... well as I said Sir they run the car park, they are in charge of the finances of that car park and as a result any money that is paid they will collect and that will be ...
33. **District Judge Jenkins :** I'm sure that's right that's how they earn their fees under the contract.
34. **Mr Lada :** ... yes and that will you know ...
35. **District Judge Jenkins :** But that's an arrangement between them and the other contracting party.
36. **Mr Lada :** ... yes but ...
37. **District Judge Jenkins :** And may well be as (inaudible) having a contractual responsibility to manage, it may well be that they had to, if I can put it this way, run the litigation ...
38. **Mr Lada :** ... yes but ...

39. **District Judge Jenkins :** ... it's not in their name, they have got no entitlement surely?
40. **Mr Lada :** ... Sir that is in my submission incorrect because they essentially are in control of that car park as managers and once ...
41. **District Judge Jenkins :** But they don't own it?
42. **Mr Lada :** ... no they are managers of the car park.
43. **District Judge Jenkins :** I'm going to strike the claim out.
44. **Mr Lada :** Sir I would contest that as I said as ...
45. **District Judge Jenkins :** Well I need to be satisfied that they as a matter of law have an entitlement to bring this claim. They may well have a contractual arrangement by which they manage, their contract may well say that the basis on which they are remunerated under the contract is from fines that might be levied. They may well have a responsibility to whoever they contracted with to deal with any litigation that might be necessary but that surely will not entitle them to bring a claim in their name in respect of land over which they have no legal title.
46. **Mr Lada :** Sir are you aware of the authority of *Fairlie v. Fenton and Another* 1870 April 26? Essentially the position was that the person ...
47. **District Judge Jenkins :** Well have you got the authority with you?
48. **Mr Lada :** ... I haven't got the transcript with me. The position is that if someone is acting as an agent on behalf of the principle owner, the land owner in this case then they can render themselves personally liable and they are entitled to enforce the contract. Now as a matter of construction if ParkingEye are responsible for the management of that car park, if they have a contractual entitlement to initiate legal proceedings on behalf of the land owner then in my submission they have properly brought this claim and they are entitled to bring a claim and recover the sums due as a result of breach of contract by the person who has parked in their car park.
49. **District Judge Jenkins :** Breach of which contract? Is Mrs Sharma a party to that contract?
50. **Mr Lada :** Well if I can explain, when a person enters into a car park they are going into private land and ...
51. **District Judge Jenkins :** That's my point.
52. **Mr Lada :** ... and when they go into that land their entitlement to be there is dependent on certain terms and conditions which are displayed all over the car park. When they enter into that car park and park their car there they then enter into a contract whereby they are allowed to park their car there and have to abide by the terms and conditions, one of which is that you cannot overstay the period of 1½ hours

and if you do so a parking charge will ensue, and once that is done then the contract is breached and this is not a free car park, it is essentially private land and you can't just park your car there without entering into a contract with ParkingEye.

53. **District Judge Jenkins :** I don't think that's an issue. The issue is are ParkingEye entitled to bring these proceedings?
54. **Mr Lada :** Well in my submission they are Sir yes because they are responsible as managers of that car park, as agents of the land owner to conduct these proceedings on its behalf.
55. **District Judge Jenkins :** That might be right, they might well need to conduct proceedings but are they entitled to bring the claim in their name?
56. **Mr Lada :** Yes Sir, again I repeat that they are because they are responsible for the management of the car park and they are acting as agents for the land owner and they can bring the case in their name. Now I strongly contest that they are not entitled to bring this claim in fact many cases brought by ParkingEye Ltd are upheld in courts around the country.
57. **District Judge Jenkins :** I am not interested in any other court in other parts of the country, I am only interested in this claim here Mr Lada.
58. **Mr Lada :** I say it simply to say that they have been entitled to bring proceedings and succeed in those proceedings in various different courts in this country and their entitlement to bring proceedings has not been challenged.
59. **District Judge Jenkins :** That might be right.
60. **Mr Lada :** To my understanding and as a result I would say that that adds weight to the argument that they are entitled and that's in addition to my initial point that because they have control of the car park, and because they are agents then they are entitled to bring the case.
61. **District Judge Jenkins :** I am going to strike the claim out. There may well be a contractual arrangement between these claimants and a third party whether they are the owners of the land or not, I don't know, no legal title evidence has been put before me and for what seems to be clear is that ParkingEye Ltd are not the owners of the land, their contractual arrangements to manage do not in my judgment entitle them to bring proceedings in their name even though their contractual requirements may impose on them an entitlement and obligation to recover fees from those who use the parking facilities but I am not satisfied that those contractual arrangements between these claimants and any other third party can bring about an entitlement to bring a claim, a contractual arrangement cannot impose a cause of action as a matter of law. ParkingEye Ltd have no legal entitlement for this land, they have a contractual arrangement that they must honour but I am not satisfied that I have heard anything that persuades me that they can bring this claim and for that reason the claim is dismissed.

62. **Mr Lada :** Sir I would seek permission to appeal and the grounds are this, as I have said already, the claim is brought by ParkingEye, I have a contract which I can produce under which ParkingEye are specifically entitled to bring legal proceedings against any person who breaches the terms and conditions of the contract between ParkingEye Ltd and that person who is parking their vehicle. That contract is between the claimant in this case and the defendant, not between the land owner and the defendant. ParkingEye manage the car park, they are entitled to bring proceedings against members of the public who breach the terms and conditions and hence they are allowed ...
63. **Mr Kerridge :** Sir we would say ...
64. **District Judge Jenkins :** No, no don't interrupt please.
65. **Mr Kerridge :** ... I'm sorry okay.
66. **District Judge Jenkins :** Don't interrupt.
67. **Mr Lada :** ... and hence they are allowed to bring proceedings in their own name and it is wholly proper for them to have initiated these proceedings and in my submission in line with the authority that I quoted of *Fairlie v Fenton* in the year 1870.
68. **District Judge Jenkins :** Well I don't know anything about *Fairlie v Fenton* and you did not have a ...
69. **Mr Lada :** Yes but in any case I rely on more of the principle that as managers and agents of the land holder they are entitled to bring these proceedings and whilst I appreciate this court may not be concerned by what is going on in other courts around this country but it is a fact that this claimant has recovered monies in various other court proceedings in this country and their entitlement to bring proceedings has not been questioned.
70. **District Judge Jenkins :** I attach no weight to that last point at all. I am going to refuse permission to appeal and any contractual arrangements that the claimants may have with the third party does not in my view as a matter of law entitle them to bring claims of this nature in their own name, such that an appeal would have no realistic prospect of success. Now then I am very grateful, thank you very much.
71. **Mr Lada :** Sir.
72. **Mr Kerridge :** Sir may we apply for our costs of the defence Sir, we have previously submitted this in the court bundle, page 27 plus the claimant has a copy?
73. **District Judge Jenkins :** Well the only element of that I think I would accept under the rules would be loss of earnings.
74. **Mr Kerridge :** What would your loss of earnings for today be?
75. **District Judge Jenkins :** Well it says here £54.

76. **Mr Kerridge :** Sorry?
77. **District Judge Jenkins :** Have you taken time off work to be here?
78. **Mrs Sharma :** I have, I have Sir.
79. **Mr Kerridge :** So how much have you lost by taking time off?
80. **Mrs Sharma :** It is £70.
81. **Mr Kerridge :** £70.
82. **District Judge Jenkins :** Well it says £54 here, time off work for hearing including travel £54.
83. **Mr Kerridge :** Your Honour I have just estimated that based on the number of hours, I thought she was going back to work later.
84. **Mrs Sharma :** Wednesday is my long day actually I am there until 8 o'clock.
85. **District Judge Jenkins :** I am not going to allow anything else if I am given a schedule that says one thing then I'm told something else I'm not sure I can rely on anything.
86. **Mr Kerridge :** Well no order for costs then.
87. **District Judge Jenkins :** No.
88. **Mr Lada :** Simply no order for costs?
89. **District Judge Jenkins :** Well the only claim (inaudible).
90. **Mr Lada :** I'm grateful Sir.
91. **District Judge Jenkins :** Thank you very much.

*End of hearing*

**We hereby certify that this is a verbatim transcript of the hearing heard on 23<sup>rd</sup> October 2013.**

**Compril Limited**

# General Form of Judgment or Order

In the <b>Brentford County Court</b>	
<b>Claim Number</b>	3QT62646
<b>Date</b>	31 October 2013



PARKINGEYE LTD	<b>1<sup>st</sup> Claimant Ref</b>
MISS ANITA SHARMA	<b>1<sup>st</sup> Defendant Ref</b>

Before District Judge Jenkins sitting at Brentford County Court, Alexandra Road, High Street, Brentford, TW8 0JJ.

Upon hearing the Defendant in person and hearing the Representative for the Claimant

## **IT IS ORDERED THAT**

Claim dismissed.

## **IT IS FURTHER ORDERED**

The Claimant is refused permission to appeal as on contractual arrangements that the Claimant may have with a third party does not as a matter of law entitle them to bring claims of this nature, in their own name, such that an appeal would have no realistic prospect of success.

Dated 23 October 2013

The court office at Brentford County Court, Alexandra Road, High Street, Brentford, TW8 0JJ is open between 10:00 am and 2:00 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 020 8231 8940 Fax: 020 8568 2401