Case No: 3JD06533

IN THE BRISTOL COUNTY COURT

2 Redcliff Street
Bristol
BS1 6GR

BEFORE:

DEPUTY DISTRICT JUDGE MELVILLE-SHREEVE

BETWEEN:

ParkingEye Limited	**Claimant**
- and -	
Mrs Natasha Collins-Daniel	**Defendant**

Mr Gopal on behalf of the **Claimant**

Mrs Collins-Daniel, Litigant-in-person

Judgment date: 24th January 2014

Judgment approved by the Court

The Transcription Agency, 24-28 High Street, Hythe, Kent, CT21 5AT
Tel: 01303 230038

No of folios in transcript 36
No of words in transcript 2,537

Deputy District Judge Melville-Shreeve:

1. This is a claim by ParkingEye Limited -v- Mrs Natasha Collins-Daniel for what was initially a parking charge, the amount of which I will deal with in a moment, but from the Court's point of view the claim arrived as particulars of claim issued from the County Court Bulk Centre saying:

> **"Claim for monies outstanding from the Defendant as registered keeper in relation to a parking charge issued on the 17th January 2013 for parking without authority on private land.**
>
> **ParkingEye's automated number plate recognition system at Eastgate Retail Park, Eastgate Road Bristol, captured vehicle [registration number] entering and leaving the car park overstaying the max stay time.**
>
> **The signage clearly displayed at the entrance to and throughout the car park states that this is private land, is managed by ParkingEye and is a max stay site, along with other terms and conditions by which those who park on site agree to be bound.**
>
> **In accordance with the terms and conditions set out on the signage the parking charge became payable. Notice under the Protection of Freedoms Act 2012 has been given under Schedule 4, making the keeper liable. The claim is in reference to parking charge [and their reference number is given].**
>
> **The amount claimed is £85 with a court fee of £15 and solicitor's costs of £50, giving a total of £150, the date of issue 10th September 2013."**

2. That is plainly a claim in contract and that is the way that it is argued on the evidence, and very ably by Mr Gopal before me today.

3. The defence provided by Mrs Natasha Collins-Daniel immediately accepts that she was the keeper of that vehicle, she has never suggested it was anybody else's, that it stayed the time that ParkingEye say, in other words about four and a half hours, but it raises a number of matters which are as follows:

> **"It is denied that the Claimant entered into a contract."**

There is then reference to a tax case:

> **"The Claimant was contracted by the landowner to provide car parking management and is not capable of entering into a contract with the Defendant on its own account, the car park is owned by the landowner, accordingly it is denied the Claimant has authority to bring the claim, the proper Claimant is the landowner. If there is a contract the provision requiring payment of £150 is an unenforceable penalty."**

4. There is reliance on Dunlop Pneumatic Tyre -v- Selfridge [1915]. It says:

> **"it is a clause designed just to punish a party for breach of contract, it does not represent a genuine pre-estimate of loss"**

And then it goes on to say:

> **"There is no loss because the Claimant is not a landowner, it is disproportionate, it bears no relation to the circumstances because it does not change whether it is ten seconds or ten years."**

It says that:

> **"It is specifically expressed to be a penalty on the Claimant's signs." (This in fact is quite wrong.)**

And it says:

> **"Further and alternatively the provision is an unfair contract term, contrary to Regulation 5 of the Unfair Terms in Consumer Contracts Regulations, falling within Schedule 2, paragraph 1(e) being a term requiring a consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation"**

And complains that:

> **"the term is not individually negotiated and causes a significant imbalance."**

5. It has to be said that I do have an inquisitorial role today, since I am satisfied that the Defendant is a consumer if there is a contract in play.

6. Now the undisputed facts then, are that this car was four hours 30 odd minutes in the car park and that on display were a number of signs, one of which has been very helpfully produced as a photocopy. It is true that when looking at it as a piece of A4 size paper some of the writing is extremely tiny. I was a little unfair in raising that because it is of course because it has been reduced from its original

size and I would not have thanked ParkingEye for bringing the original signs to Court.

7. So I do not think that there is any particular criticism of the size of the print, but what I would say is this, that the first question that has to be addressed is whether or not there is a contract. It is a somewhat vexed question for this reason, that I have had referred to me a number of decisions by district judges, some of whom have found that there is a contract and some of whom have found that there is not, and I am neither persuaded nor particularly helped by those findings and I have, instead, tried to go back to basic principles to consider whether a contract exists.

8. Well the first question is, what is the status of ParkingEye? Do they have any rights over this land? I am somewhat apprehensive because I have not seen a contract between ParkingEye and the landowner. Now I am told there is a reason for this, which is that it is effectively commercially sensitive and sometimes when such contracts have been produced they have ended up on the internet and caused, I do not know whether difficulty, but certainly embarrassment to ParkingEye. But, whatever the reason, it means that all I can do is rely on the evidence as put before me, which in written form comes from an agent who says that there was authority for ParkingEye to run this car park.

9. It is all somewhat removed. So the agent is one Mr Ward. He is acting on behalf of Savills, Savills act on behalf of CPG South East Limited, CPG South East Limited are said to be the landowners, and it is said that Savills have some agreement with CPG where they can authorise people, and it is said that they, as that person, then authorised ParkingEye Limited as car park operator.

10. I have to say it seems to me that I should have had shown to me in the evidence a contract upon which ParkingEye relied. I do not know why it is sensitive. It does not seem to me it is very sensitive, but there we are, and if they do not produce it it causes me this difficulty, that I do not really know what their contractual status was. I doubt very much if they were agents, and there is a curiosity in the notice, which I am going to come to in moment, which I find very difficult to reconcile with the assertion that they were in charge of the management of the car park, in fact it more or less says the opposite.

11. So my principal finding is that I am not satisfied that there is a contract here because I am not satisfied that ParkingEye had any right to enter into any permission one way or the other for the Defendant's parking. But I am going to assume, for the purposes of the rest of this judgment, that I am wrong in that finding and I am going to move on now to consider if there is a contract, what the contract is.

12. Well, ParkingEye themselves have declared what the contract should be. It should be that which is written upon this notice (the notice is exhibit 2), and it says in line one of the notice:

"We are not responsible for the car park's surface, other motor vehicles, damage or loss to or from motor vehicles or general site safety. Parking...."

Now these are the words:

"is at the absolute discretion of the landowner and the terms and conditions that apply are set out within this notice the parking contract"

13. So, there is a very bizarre comment that the landowner not ParkingEye have the sole discretion as to whether Natasha Collins-Daniel could have her car on that land or not. Only the landowner, not ParkingEye. So what agreement has been struck between the landowner and ParkingEye? I do not know.

14. But then, let us read on. This is the contract they say. Now I look at this document as a contract and it is patently a very poorly drafted contract. It does not seem to have occurred to ParkingEye that that which you display prominently in car parks does not work very well as a contract when you lie it down flat on a table in a court of law.

15. First of all there is almost no punctuation, which causes a great deal of concern and difficulty. There are no paragraph numbers, neither of the parties are described, the purpose of the contract is silent, and instead one has what is effectively a continuous burble, some of it is slang, like 'max' and nothing is properly defined, and off I go construing this contract contra proferentem, in other words against ParkingEye, trying to work out what it says:

"4 hour max stay"

No punctuation:

"customer only car park"

Customer of whom? Customer of ParkingEye? Customer of the shops? Which shop?

"for use only whilst shopping on site"

16. Then, still no punctuation:

"failure to comply with this"

Singular, not failing to comply with these provisions, namely a maximum stay of four hours and shopping in the shops on the site, but this, that is a singular matter:

"will result in a parking charge of £85"

But after the words '£85' there is no punctuation, and on it goes:

"Parking limited to 4 hours (no return within 1 hour)"

Now does the £85 parking charge apply to people both who exceed four hours and those who make a return within one hour I wonder?

"Park only within marked bays"

Is that something you are charged £85 if you are outside of a marked bay? We do not know, it is a contract, there is no punctuation, on we go:

"Parent and toddlers only in marked bays"

Well that is very poor language. It means in the bays marked 'parent and toddlers' only genuine parent and toddlers should stay. Similarly:

"Blue badge holders only in marked bays"

Again, no punctuation, it means almost exactly the opposite to what it says. It does not mean that you are going to take a charge of £85 for a blue badge holder who is not in a marked bay, it means you can take a charge of £85 off a person who does not have a blue badge in a blue badge bay. Or does it? Does the £85 apply to blue badge holders or not?

"Strictly no parking on double yellow lines"

What happens if you park on a double yellow line, £85? Is that the charge? No way of construing it. And:

"Strictly no parking within loading bays"

Again, is there an £85 charge? Who knows.

17. So saying that there is a contract is one thing, but saying what the contract is is quite another, and I am not at all satisfied that there is a clear contract here to say that if you are a customer of the shops but you stay for more than four hours you have to pay £85.

18. However, I might be wrong about that. So I move on to my third consideration, which is whether £85 is justified or is it a penalty? Now I have read with interest the extract I have been given, what is effectively an obiter judgment of His Honour Judge Hegarty QC in ParkingEye -v- Somerfield Stores Limited, of the

18th March 2011, and I note that it was his view that probably, at £10 less, £75, would have been an acceptable charge, not a penalty, and probably £135 would be a penalty.

19. I observe that the £75 was actually £37.50 when ParkingEye's then 50% deduction was applied. In this case it is a 40% reduction, bringing the fee down rather oddly to £50. Mathematically it should have come down to £51 but they round it down, and so actually this is a much more substantial amount than he was looking at.

20. But, more to the point, there is this, I have had the opportunity to reflect on whether this contract is one in which the £85 is a penalty in a very clear way, because this parking arrangement never envisages, under any circumstances, payment for parking. Every parking space in this car park is free and it is always free so long as every car only stays for no more than four hours and every driver goes shopping.

21. Ergo, the contract is one for free parking. So if there is a contract it is you get somewhere to park for nothing for four hours. It is then, one second or one minute over four hours, that one is charged £50, if you pay within 14 days, or £85 if you take longer about it. That is an enormous amount of money. Is it in any way related to loss?

22. It is not related to loss at all. Look at it this way, there was never going to be any payment for any of those parking spaces. In fact, ParkingEye's only source of income, I have not seen the agreement with the owners but this is the surmise I make, their only source of income is penalties.

23. Now, if that is right then there cannot be any loss being represented by this penalty charge. This penalty charge represents the only profit the company ever gets. In other words the penalty charge is completely designed as a penal provision and completely unrelated to any loss that the company suffers as a result of this lady staying 31 minutes longer than the company say she ought to have done.

24. So quite apart from the excessive level I consider this is plain and simply a penalty charge and in English law would not be enforceable. It never would have been under our contract law. But happily, due to European legislation, we now have to go on to consider other regulations which have been brought into force, which are not referred to by His Honour because presumably they were not argued before him, but which are routinely considered in this Court, and specifically Regulation 5 of the Unfair Terms in Consumer Contracts Regulations 1999, and I am satisfied that this was not an individually negotiated contract, there is a significant imbalance in the parties' respective rights and obligations and the charge is heavily disproportionate in respect of a short overstay so under those regulations I find it to be unenforceable.