

**IN THE COUNTY COURT AT SKIPTON**

**Claim No. C3DP56Q5**

The Court House  
Otley Street  
Skipton  
BD23 1RH

Thursday, 17<sup>th</sup> November 2016

Before:

**DISTRICT JUDGE SKALSKYJ-REYNOLDS**

Between:

**EXCEL PARKING SERVICES LIMITED**

Claimant

-v-

**MR IAN LAMOUREUX**

Defendant

Case No. C3DP56Q5

Solicitor for the Claimant:

MR PICKUP

The Defendant appeared In Person

**JUDGMENT APPROVED BY THE COURT**

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## JUDGMENT

DISTRICT JUDGE SKALSKYJ-REYNOLDS:

1. The claimant, Excel Parking Services Limited, manages and enforces private parking at a car park known as the Cavendish Retail Park in Keighley. The claimant is contracted by the land owner to enforce the agreed terms and conditions which involve payment for parking using a particular system.
2. The system is that drivers driving into this car park see fairly prominent signs in and around the car park which state that payment must be made for parking. The number of hours is set out fairly clearly on the signage. It is made clear that a person choosing to park in this car park – they have a period of ten minutes in which to decide whether they wish to stay or not stay – must enter their vehicle registration numbers into the pay and display machine (PD machine). That machine then ties up with the machines at the entrance and exit of the car park that take photographs of all vehicles entering and leaving the car park. The entry time is recorded and the exit time is also recorded. The entering of the registration number and the fee paid must tally with the entry time and exit time. In other words, it is a highly automated system to ensure that drivers choosing to park in this car park do in fact pay the correct parking charges for the benefit of all those shoppers who wish to park outside retail premises and need a car parking facility.
3. We know that on 25<sup>th</sup> July 2015 a vehicle, namely a Peugeot 107, [REGISTRATION REDACTED], vehicle entered the car park at 16.17 on 25<sup>th</sup> July 2015 and left the car park at 16.36.
4. This is a period of 19 minutes. Therefore, a contravention had occurred because no valid Pay and Display ticket was purchased for vehicle registration number [REGISTRATION REDACTED] or incorrect registration details were entered into the PD machine. The correct fee on this occasion would have been, I think, £1.00. However, that is immaterial.
5. The point is that the defendant Mr Lamoureux, who appears before me today, accepts that he is the registered keeper of the vehicle in question, the Peugeot 107, vehicle registration number [REGISTRATION REDACTED], but he swore on oath before me today that he was not the driver of the vehicle on the day in question. He pointed out that there are several people who could have been the drivers on the relevant day. He is insured to drive this vehicle, his wife is insured to drive this vehicle, but also he pointed out there are others who have the benefit of what is called a driving other cars insurance, the DOC insurance, who could equally drive this vehicle if he gave permission. He was not asked whether he could have given permission on the day to another person to drive the vehicle other than himself and his wife, but even if he had been asked that question it is not really material. That is probably why Mr Pickup did not ask it and nor did I.
6. The important issue here is whether the defendant was driving the vehicle on the day in question and he said on oath, and I believe him, no he was not. As I have just said, this vehicle was photographed on 25<sup>th</sup> July entering and leaving the car park without purchasing a valid parking ticket as required by the terms and conditions of parking.

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Therefore, in my view, there is no doubt that the driver in question was in contravention of the terms and conditions of using the car park.

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7. Unfortunately, the claimant has a problem here. The defendant denies he was the driver and the claimant has absolutely no evidence that he was the driver. There is no assumption in law that the registered keeper is also the driver of the vehicle. That is trite law but if we needed any support for that proposition there is support and Mr Lamoureux helpfully put it in the bundle. It is the High Court decision of *R (on the application of Duff) v Secretary of State for Transport [2015] EWHC 1605*. That decision states clearly that there is no presumption in law that the registered keeper of a vehicle is the driver.

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8. In my experience, and I do have some quite considerable experience of these cases, the parking companies who administer car parks such as Excel frequently rely on the Protection of Freedoms Act 2012 which states at paragraph 4:

“(1) The creditor [*the car parking charge administrator, Excel in this case*] has the right to recover any unpaid parking charges from the keeper of the vehicle.

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(2) The right under this paragraph applies only if—  
(a) the conditions specified in paragraphs 5, 6, 11 and 12 (so far as applicable) are met; and  
(b) the vehicle was not a stolen vehicle at the beginning of the period of parking to which the unpaid parking charges relate.”

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9. Mr Lamoureux, the defendant, has confirmed the vehicle was not and has not been stolen. So the claimant may rely on the Protection of Freedoms Act 2012 and it must show that it has complied with the conditions specified in 5, 6, 11, and 12 of the Act.

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“5(1) The first condition is that the creditor—  
(a) has the right to enforce against the driver of the vehicle the requirement to pay the unpaid parking charges  
but;  
(b) is unable to take steps to enforce that requirement against the driver because the creditor does not know both the name of the driver and a current address for service for the driver.”

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6(1) The second condition is that the creditor (or a person acting for or on behalf of the creditor)...  
(b) has given a notice to the keeper in accordance with paragraph 9.”

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10. We know that Mr Lamoureux is the keeper and so a notice must have been given to Mr Lamoureux which complies with paragraph 9. So we turn to paragraph 9:

“9(1) A notice which is to be relied on as a notice to keeper for the purposes of paragraph 6(1)(b) is given in accordance with this paragraph if the following requirements are met.

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There are various requirements, but the ones that appear not to have been met, according to Mr Lamoureux, are the following:

The notice must:

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“9(2)(b) inform the keeper that the driver is required to pay parking charges in respect of the specified period of parking and that the parking charges have not been paid in full.”

“9(2)(c) Describe the parking charges due from the driver as at the end of that period, the circumstances in which the requirement to pay them arose (including the means by which the requirement was brought to the attention of drivers) and the other facts that made them payable.”

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11. The notice must also:

“9(2)(e) State that the creditor does not know both the name of the driver and a current address for service for the driver and invite the keeper—

(i) to pay the unpaid parking charges; or

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(ii) if the keeper was not the driver of the vehicle, to notify the creditor of the name of the driver and a current address for service for the driver and to pass the notice on to the driver.”

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12. We are now on subparagraph 9(f): the notice must

“(f) warn the keeper that if, after the period of 28 days beginning with the day after that on which the notice is given—

(i) the amount of the unpaid parking charges specified under paragraph (d) has not been paid in full, and

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(ii) the creditor does not know both the name of the driver and a current address for service for the driver, the creditor will (if all the applicable conditions under this Schedule are met) have the right to recover from the keeper so much of that amount as remains unpaid.”

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13. I have looked at the notices. There are two notices served by the claimant upon the defendant. They are dated 6<sup>th</sup> August 2015 and 17<sup>th</sup> September 2015 and, in my view, particularly this provision 9(f) has not been complied with. Equally, some of the other provisions or conditions have not been strictly complied with.

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14. I have turned to the witness statement of Mr Krishnarao for more information on this point because, of course, it is for the claimant to show that it has complied with the Protection of Freedoms Act 2012 because it needs to rely on it, in my judgment to make the registered keeper liable for the driver’s breach of contract. Unfortunately, all Mr Krishnarao says under paragraph 19 is:

“For the avoidance of any doubt, the claimant does not seek to rely on the Protection of Freedoms Act or keeper liability in respect of this claim.”

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15. That immediately tells me that the claimant is not seeking to rely on the Protection of Freedoms Act 2012 or keeper liability. So it appears to be asserting that this defendant, Mr Lamoureux, is the driver but it has absolutely no evidence of that and none has been adduced today.

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16. So unfortunately, I think the claim against Mr Lamoureux is totally misconceived because it has no evidence that he is the driver and it seems to be relying on some assumption that the registered keeper is the driver because it is not seeking to rely on the Protection of Freedoms Act 2012 or keeper liability. Unfortunately, Mr Krishnarao is not here in court to be cross-examined and so I cannot ask him what he means by saying “or keeper liability” and they do not rely on the Protection of Freedoms Act. In other words, I cannot cross-examine him, indeed nor can Mr Lamoureux, about why he considers Mr Lamoureux to be liable for the driver’s contravention and section 19 and 20 of the defence.

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17. Unfortunately, therefore it seems to me that it is the claim that is misconceived, not the defence, and I will be dismissing the claim because there is no proof that this registered keeper was the driver. So that is the reason for my judgment, and for all the other reasons I have mentioned earlier. The claim is dismissed.

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*[Hearing continues on costs issues]*

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