IN THE COUNTY COURT AT HIGH WYCOMBE **Claim No. B4GF26K6 & 2 OTHER CLAIMS**

The Magistrates and Family Court
Easton Street
High Wycombe
HP11 1LR

Thursday, 21st April 2016

Before:

DISTRICT JUDGE GLEN

Between:

PARKING CONTROL MANAGEMENT (UK)

Claimant

-v-

CHRISTOPHER BULL

Defendant

Counsel for the Claimant: MR THOMAS SAMUELS

Lay Representative for the Defendant: MR DAVID CARROD

JUDGMENT APPROVED BY THE COURT

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JUDGMENT

DISTRICT JUDGE GLEN:

1. I give this judgment in all three cases brought by Parking Control Management (UK) Limited against the following defendants: Mr Christopher Bull, Miss Jane Lyndsay and Mr Christopher Woolford. My decision in each case is identical and there has been no distinction between the defendants that has been brought to my attention which is material to this case. I have heard these claims together because all parties agree that they raise identical issues of fact and law and there are very small differences and that they can be resolved by this single judgment.

2. In each case the claimant brings an action against the defendant for what are described, and I will call them, parking charges. In the case of Mr Bull it is alleged that he parked his car, registration number [redacted] on the roadways of what is known as the Wye Dene Estate on various dates between 6th October 2014 and 12th November 2014. On each occasion it is said he incurred a charge of £150, making a total of £750 made up of a £100 charge and £50 as an additional enforcement amount, as I will call it as neutrally as I can. In the case of Mr Woolford, he parked a series of different vehicles on various occasions between 22nd September 2014 and 21st December 2014. Again on each occasion he has been visited with a £150 total charge, making a total of £1,350. In the case of Miss Lindsay, she parked a vehicle, [redacted], on various occasions between 6th October 2014 and 16th December 2014 and in the same way has incurred a total charge of £900. There is no dispute in this case that the vehicles in question were parked on the roadways of the estate on the dates and times that are said to have incurred the charge.

3. The claimant in this case has been represented by Mr Samuels of counsel and I am grateful to him for both his succinct skeleton argument and his succinct submissions on the points at issue which I will identify in a moment. Mr Carrod has come to represent the defendants. I have allowed him to speak on their behalf and he has done so again with economy and clarity and I am grateful to him also for his skeleton argument on the points in issue.

4. As part of this case I have read the various documents presented to me by the parties, which include but are not limited to a witness statement from each defendant in more or less identical terms, their original defences, again in more or less identical terms, and the replies to those defences and the witness statements in each case of Miss Philpott, again in pretty much identical terms. I have taken all of those matters into account in reaching my decision together with the oral submissions made to me by the parties in the course of this morning's, now this afternoon's, hearing.

5. The facts of this matter are simply as follows. The Wye Dene Estate is, as I understand it, a development of properties which, for relevant purposes, have been let on shared ownership leases by Thames Valley Housing Association. Each of the defendants holds a property (it may be a flat or a house, I do not know, I suspect it is probably a flat) on a shared ownership lease and that shared ownership lease appears to have included not only the flat itself but also a single parking space for their use.

6. I indicated during the course of the hearing that I would assume, and I do assume, for the purposes of this judgment because unfortunately no copy of the leases are before

me, that the leases in the usual way contain the demise of a term of years in relation to both the flat and the parking space and grant rights of way or easements, to give them their technical term, over the communal roadways. For these purposes I am sure they grant rights of way over other areas too, but over the communal roadways on the estate. As a matter of law, a right of way does not convey a right to park.

7. In 2013 it appears that the managers of the estate and the residents had a meeting at which an indication was given that there was an intention to introduce a parking regulation scheme relating to the roadways. One of the issues that we had to resolve at the start of this case was that it was said at that meeting that the purpose of the parking scheme was to deter offsite parking, ie, by people who do not live on the estate. I had to consider whether that was an issue which had its own separate life in the context of these proceedings. I decided that it would be wrong, as it was not raised in the defence, to allow it to be used for anything other than an indication of one purpose for the scheme, but we have no evidence of what was said at the meeting other than what Miss Lindsay says and we have no evidence from Thames Valley Housing Association about the purpose for which they appointed, as I am satisfied they did appoint, the claimant to regulate parking on the land.

8. At some time, perhaps in 2013 but probably more likely in 2014, the claimant erected various signs at various points along the roadways of the estate and there has been no suggestion to me in argument that those signs did not adequately draw to the attention of persons on the estate what they have to say. Those signs say this. They are headed by Parking Control Management's logo and they say this:

> "This site is private land and is managed and operated by PCM (UK) Ltd. Parking conditions apply."

Those parking conditions are stated to be as follows:

> "No parking on this roadway at any time. No parking either wholly or partially on paved, landscaped or access areas at any time. Enforcement in operation 24 hours."

Then in slightly smaller type underneath those one would have thought fairly clear words are these words:

> "By parking or remaining at this site otherwise than in accordance with the above you, the driver, are agreeing to the following contractual terms."

There is a box saying "Parking charge notice" and it says:

> "You agree to pay consideration in the form of a parking charge in the sum of £100 to be paid within 28 days of issue. This is reduced to £60 if paid within 14 days. You will be liable for additional parking charges for each and any subsequent 24-hour period or part thereof that the vehicle remains or if it returns at any time."

Then there are other bits which I am not going to mention, but I will mention this other note:

> "Failure to pay this charge may result in the vehicle keeper's details being requested from the DVLA. Enforcement action may incur additional costs that will be added to the value of the parking charge and for which the driver will be responsible."

9. I have seen some limited photographs of the estate and from those photographs I notice that the estate roads are relatively wide, they have fairly generous pavements, they, as Mr Samuels has suggested, pass by the various flats including the balconies and windows of those flats and obviously they permit circulation of traffic around the estate including, of course, delivery vehicles, emergency vehicles and potentially rubbish disposal vehicles. It is always dangerous to form any opinion from looking at photographs but I would have said that parking on one side of the road was unlikely to impede traffic except in the sense that they may have to stop and pass. Parking on both sides almost certainly would impede certainly larger traffic. The photographs suggest that people do park on the side of the road on a regular basis, but that is in one sense neither here nor there.

10. At the start of the case we identified three issues which needed to be resolved in this case in order to establish whether the claimant was going to succeed or not. The first of those issues is whether in any sense a contract arose between the claimant on the one hand and each of the defendants on the other at the time that they parked their car on the roadways within the estate. The second issue if there is a contract, because it becomes academic if there was not, was whether the charge was either potentially a consideration for parking or alternatively a penalty for breach of the contract which one assumes exists. The last issue was the meaning of the part of the notice which talks about additional costs being added to the parking charge and the extent to which the claimant is entitled to add an arbitrary, or a fixed figure at £50, to the claim in each case for those charges.

11. The issue of parking and charges for parking has been a difficult one over the years and in particular the issue of whether or not these charges can be considered to be penalties has been one that has attracted some lively litigation involving another parking firm, a well-known firm known as ParkingEye. In the case of *ParkingEye Limited v Beavis [2015] UKSC 67*, the Consumer Association intervening, the dispute eventually reached the highest court in this country, the Supreme Court, and, as I understand it, on 4th November last year a seven judge court gave an opinion on the outcome of that appeal. I will not summarise the outcome of that decision but I will deal with what the findings were in relation to the issues which we are concerned with.

12. The first issue is the question of contract. In the *Beavis* case ParkingEye regulated the use of a car park serving commercial premises where a free parking period was permitted and where thereafter anybody overstaying the two-hour free parking period was required to pay a charge of £85. The Supreme Court decided there essentially was a contract for two hours free parking which, if breached, resulted in a fixed damages clause requiring payment of £85 and the Supreme Court went on to decide that that was not a penalty.

13. Analysing the route by which the Supreme Court decided the issue of contract is not easy because the parties were agreed, as they were before the Court of Appeal, that there was a contractual relationship between the parties and therefore the matter was

not argued before the court. However, there are some useful parts of the analysis and I am going to deal with those because this is an important issue.

14. Lord Justice Neuberger, with whom Lord Hodge agreed at paragraph 284 of the judgment, at paragraph 94 held that Mr Beavis in that case had a contractual licence to park his car in the retail park on the terms of the notice posted at the entrance which he accepted by entering the site and those terms were that he would not stay for more than two hours etc. He notes that the Court of Appeal, and indeed the Supreme Court, doubted this analysis, but on reflection he says this was correct and he became clear that this was a contractual licence.

15. Lord Mance, dealing with the same issue at paragraph 189, had a bit more difficulty with this analysis. He was unhappy with the idea of a contractual licence because, of course, ParkingEye did not have any interest in the car park itself out of which it could grant a licence. I am not sure that would necessarily, with respect to a much more eminent lawyer than myself, have been a fact which would have prevented the grant of a licence. You do not need a legal title to grant a licence. What he does go on to say is this. In paragraph 190 he says:

> "It may be suggested that Mr Beavis thereby promised nothing which can in law constitute valuable consideration. He was being given a licence, on conditions, and he would have been a trespasser if he overstayed or failed to comply with its other conditions. But ParkingEye was not in possession of the car park, or capable of bringing proceedings in trespass. It had a mere right to control parking at the site – the right to permit or refuse others to park there on such conditions as it might stipulate. By promising ParkingEye not to overstay and to comply with its other conditions, Mr Beavis gave ParkingEye a right, which it would not otherwise have had, to enforce such conditions against him in contract. Even if no parking charge had been stipulated, enforcement would still have been possible in law, even if a claim for damages or for an injunction might not in practice have been likely. With the stipulated parking charge, the nature of the intended contract is even clearer, although the question arises whether the Parking Charge is an unenforceable penalty. The *quid pro quo* provided by ParkingEye in return for Mr Beavis's promise was the grant of permission to park for up to two hours in its discretion free of charge, on conditions. Each party thus gave the other valuable consideration."

16. I simply record that Lord Toulson also provided an analysis of the matter which I find rather inconclusive and there was no other consideration of the issue by the Supreme Court judges.

17. Why is this important? It is important for this reason. In the *Beavis* case the scheme was categorised by the permission the ParkingEye gave Mr Beavis to be in the car park for a limited period of time. So whether you call it a contractual licence or whether you simply call it a contractual permission, as Lord Mance in the end did, that was the consideration and the consideration flowing the other way was Mr Beavis's agreement to be bound by those terms.

18. I am afraid that in my judgment that analysis just does not work in this case. It does not work for this reason. If the notice had said no more than if you park on this

roadway you agree to pay a charge then it would have been implicit that PCM was saying we will allow you to park on this roadway if you pay £100 and I would agree with Mr Samuels' first analysis that essentially the £100 was a part of the core consideration for the licence and was not a penalty for breach. The difficulty is that this notice does not say that at all. This notice is an absolute prohibition against parking at any time, for any period, on the roadway. It is impossible to construct out of this in any way, either actually or contingently or conditionally, any permission for anyone to park on the roadway. All this is essentially saying is you must not trespass on the roadway. If you do we are giving ourselves, and we are dressing it up in the form of a contract, the right to charge you a sum of money which really would be damages for trespass, assuming of course that the claimant had any interest in the land in order to proceed in trespass.

19. I think Mr Samuels recognised the difficulty of his conditional obligation argument, ie you must not park here but if you do then you have got to pay, and he urged upon me in the alternative that one had to look outside of just the roadways and look at the leases and the rights and obligations under the leases as a whole and to construct, as it were, a package of mutual obligations and benefits which gave rise to consideration for a contract whereafter a breach would result in a charge.

20. I am not with him on that argument. The leases are a self-contained set of rights and obligations. They grant a leasehold title in relation to the parking space and the flat. They probably grant a right of way over the roadways, but they say nothing at all about the right to park on the roadways. In my judgment the question of the ability to park on the roadways is a quite separate matter. On each occasion when the defendants parked on the roadway they trespassed against the interest of Thames Valley Housing Association Limited and Thames Valley Housing Association Limited would have been entitled to seek an injunction from doing it and would have been entitled to sue them for damages and those damages might have represented a reasonable charge for doing what they had done. However, in my judgment, there was never any contractual relationship, whether one categorises it as a licence or simply some form of contractual permission, because that is precisely what PCM were not giving to people who parked on the roadway.

21. For that reason alone I will dismiss this claim, but as the parties have taken the trouble to argue the other issues that arise and in case the matter has to go to any higher court, I will indicate what my views were on the remaining issues.

22. As I have already indicated in the course of argument, the question of whether a clause is a penalty, assuming we get this far, is whether it is a secondary obligation imposing a detriment which is out of all proportion to the legitimate interests of the innocent party to the contract. At paragraph 97 of Lord Neuberger's judgment he identified in short form the various legitimate interests of ParkingEye Limited. They were essentially on the one hand the commercial interests of controlling parking in terms of the interests of the various commercial entities who would expect customers to use their car park, and also the commercial interests of ParkingEye itself in being able to make a profit and cover the costs of running the scheme.

23. Mr Samuels in argument before me has urged upon me that essentially identical considerations apply, or at least comparable considerations apply, and I agree with him. In my judgment either ParkingEye or Thames Valley had a legitimate interest in

regulating the use of the roadways, in ensuring amongst other things that people from off the estate did not park there, ensuring that access by people to their own parking spaces was not restricted, preventing obstruction of the roadways to emergency or delivery vehicles, and preventing disturbance to residents from people who park right outside their windows or underneath their balconies and may or may not decide to exit their car before listening to some music they are particularly fond of. I also find that it is a legitimate interest on the part of the claimant to recover money and to make a commercial profit and I would not have been persuaded that £100 was disproportionate to the legitimate interests that I have identified.

24. I would, however, have not made any additional award in relation to the £50. In my judgment this is not a liquidated damages clause. It is not more than telling the parker that additional costs may be generated if you do not pay. That is a statement of the obvious, it is not a contractual entitlement and to the extent that it keys up, as it were, a claim for damages for breach of contract, there is not a shred of evidence before me to prove that that sum was £50. I suspect that most of the additional costs identified in Miss Philpotts' witness statement would have been caught up in the £100 flat charge in any event and I would have refused to make an award of that sum.

25. As I have already indicated, for the reasons I have given, all three of these claims will be dismissed.

MR CARROD: Thank you, sir. I would just like to ask the defendants if they have any costs they wish to claim?

THE DISTRICT JUDGE: Yes, please do.

MR CARROD: They have taken time off work, if they could do that *[inaudible]*. The maximum figure you can claim is £95. You have to be able to justify that.

THE DISTRICT JUDGE: Let us just be clear about what we are talking about here, Mr Carrod. Someone who comes to court as a witness, which effectively also means a party because they may be called upon to give evidence, is entitled to recover a maximum of £95 for loss of earnings. So in each case I need to ask you, I am assuming you are Mr...?

MR BULL: Bull.

THE DISTRICT JUDGE: Are you working currently?

MR BULL: Yes.

THE DISTRICT JUDGE: And have you lost income as a result of coming to court today?

MR BULL: Yes.

THE DISTRICT JUDGE: Does your income exceed the sum of £95 per day?

MR BULL: Yes.

THE DISTRICT JUDGE: Do you require that to be given on oath, Mr Samuels?

MR SAMUELS: No, sir, I do not think so.

THE DISTRICT JUDGE: Same questions for you please, Miss Lindsay.

MISS LINDSAY: Yes, I work.

THE DISTRICT JUDGE: You are in work.

MISS LINDSAY: Full time, yes.

THE DISTRICT JUDGE: Have you lost income as a result of coming here today?

MISS LINDSAY: Yes.

THE DISTRICT JUDGE: Do you earn more than £95 a day?

MISS LINDSAY: *[No?]*.

THE DISTRICT JUDGE: Do you want to tell me how much you earn a day?

MISS LINDSAY: *[Probably £80?]*.

THE DISTRICT JUDGE: Mr Woolford?

MR WOOLFORD: Yes. *[£95 as well?]*.

THE DISTRICT JUDGE: All right. Very well. In each case I will order the defendant recover against the claimant witness expenses in Mr Bull's case of £95, in Miss Lindsay's case £80 and in Mr Woolford's case £95. Anything else?

MR CARROD: That is all, thank you, sir.

THE DISTRICT JUDGE: Thank you.

MR BULL: Thank you.

MISS LINDSAY: Thank you very much.

THE DISTRICT JUDGE: That is my judgment.

MR WOOLFORD: Thank you, sir.

[Court adjourns]