

IN THE COUNTY COURT AT LIVERPOOL

Claim No. C1DP0H0J

35 Vernon Street
Liverpool
L2 2BX

Thursday, 4th May 2017

Before:

DEPUTY DISTRICT JUDGE GOURLEY

Between:

VEHICLE CONTROL SERVICES LIMITED

Claimant

-v-

SARAH QUAYLE

Defendant

Counsel for the Claimant:

MISS HUGHES

Lay Representative for the Defendant:

MR IAN LAMOUREUX

JUDGMENT APPROVED BY THE COURT

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JUDGMENT

DEPUTY DISTRICT JUDGE GOURLEY:

1. This is a case brought by Vehicle Control Services Limited against Sarah Quayle, as she is named on the claim form and throughout the proceedings. In fact it is now Sarah Wilson, Miss Quayle having changed her name at the beginning of 2014 by way of deed poll. I am dealing with a preliminary issue which strikes me as potentially deciding the entirety of this case.
2. The claim arises, Vehicle Control says, as a result of a contravention of a no parking notice on 28th December 2014 when the claimant says the car (for whom the registered keeper was the defendant) was seen parked in a restricted area of the site, the site being the Princes Dock area within Liverpool, which led to the claimant issuing a parking charge notice and then subsequently a notice to keeper which I believe is dated 5th February 2015.
3. The claimant puts its case squarely and solely on the basis that the defendant has entered into a contract and that she should be held to that contract by virtue of the fact that the defendant was the driver at the time and the driver decided to park in contravention of those signs and thereby entered into the contract that was set out within those signs, namely, to pay £100 plus contractual costs of pursuing that money.
4. For me to find that there has been a breach of contract I have to find that the defendant, that is, Miss Quayle now Miss Wilson, entered into that contract by virtue of the fact that she was the driver at the time that the parking charge notice was issued and at the time that that car was parked in the Princes Dock area on 28th December 2014.
5. This is not a case that proceeds under the Protection of Freedoms Act where there is the ability for a parking company to pursue the registered keeper for the parking charges. The claimant says it does not seek to rely on the Protection of Freedoms Act and in fact it would appear that it does not seek to rely on the Act as it has failed to comply with the requirements set out within schedule 4 of that Act, that schedule being the necessary steps and conditions that have to be met before the registered keeper can have the liability for the breach of contract to be transferred to them from the driver.
6. Therefore it strikes me that there is a simple question that the court has to ask itself. Is there evidence produced by the claimant to show that Miss Quayle, and I will call her Miss Quayle for the remainder of the judgment, is there evidence to show from the claimant that Miss Quayle was on a balance of probabilities the driver on 28th December 2014 when the car was parked in the Princes Dock area? The claimant has produced absolutely no evidence that the defendant was the driver and simply says that they are entitled to presume that the defendant was the driver because effectively she was the registered keeper at the time.
7. I disagree. I disagree particularly in light of the evidence that has been produced by Miss Quayle showing that there are two other people who are on the contract of insurance for this car. She is not the owner of the car albeit she is the registered keeper. The owner of the car is her partner, Mr Green, who also appears on the contract of insurance as one of the named drivers. She says in her witness statement that she was not the driver, but even if I ignore everything that Miss Quayle has produced and look

solely at the evidence that is produced by the claimant, the claimant comes nowhere close to satisfying me on a balance of probabilities that the defendant was the driver at the time. They may have had a claim had they complied with the requirements of the Protection of Freedoms Act, but they have not and they cannot pursue Miss Quayle on the basis of a breach of contract in the absence of any evidence at all that she was actually the driver at the time of the incurrence of the parking charge notice.

8. As a result of that ruling it seems to me that everything else falls away because the whole claim is based on the breach of contract. So I do not need to deal with any of the other issues that have been raised by the defence. So the judgment will simply be claim dismissed.

THE DEPUTY DISTRICT JUDGE: So: (1) claim dismissed. What about costs?

MR LAMOUREUX: Thank you, madam. Yes, the defence would like to request costs. We have submitted within the defence bundle a schedule of costs.

THE DEPUTY DISTRICT JUDGE: Statement to the schedule of costs...

MR LAMOUREUX: I apologise, madam. The defendant has just informed me that she did not...

THE DEPUTY DISTRICT JUDGE: I was going to say, I am sure I have not seen a schedule of costs.

MR LAMOUREUX: I have a copy here for my reference. So the defence claims loss of a day's earnings, one day at *REMOVED* and—

THE DEPUTY DISTRICT JUDGE: Is that a gross or net figure?

MR LAMOUREUX: That is net and litigant in person—

THE DEPUTY DISTRICT JUDGE: Is that the defendant's own loss?

MR LAMOUREUX: That is loss of a day's leave, yes. Under 27.14(g) the defence would like to request litigant in person costs at six hours at £19 per hour, £179.38. So a total costs claim of *REMOVED*. I think the defence has established that the claimant has acted unreasonably in bringing this claim.

MISS HUGHES: Madam, I do not know if you wish me to address you or...

THE DEPUTY DISTRICT JUDGE: 27.14(g) I have to be satisfied before I order any costs that one party has behaved unreasonably in either bringing the claim or within the conduct of the claim, do I not? Why do you say that the claimant has behaved unreasonably because it is a fairly high threshold that you have to get over?

MR LAMOUREUX: Yes, madam. This claim had no prospect of success. The claimant, by their own admission, does not rely on the Protection of Freedoms Act. The defendant has stated in their defence that they were not the driver and the claimant was well aware that they could not prove, they had no evidence, that the defendant was the

driver. At that point they must have realised that there was no prospect in bringing it to the court. I believe it has been a waste of the court's and the defendant's time bringing about this claim today.

THE DEPUTY DISTRICT JUDGE: So it is just simply on the basis of no prospects of success?

MR LAMOUREUX: There are other things as well. The things we have already discussed, such as the particulars of claim. Something that we have not mentioned, which is that the defendant never received a directions questionnaire from the claimant. They sent it to Northampton [Court?] Centre, but not to the defendant and their non-compliance with CPRs is I think unreasonable.

THE DEPUTY DISTRICT JUDGE: Is there anything else you would like me to take into consideration?

MR LAMOUREUX: Just the fact that they have made unreasonable assumptions as to who was driving which they had no entitlement to do. We did not get into it but within the defendant's bundle was a quote from Henry Greenslade, who is an eminent barrister and parking law expert, who makes it absolutely clear in his statement that there is no legal presumption in law that a registered keeper is the driver and the operator should never make any reference to that sort of situation.

THE DEPUTY DISTRICT JUDGE: Miss Hughes, do you want to address me on 27.14, because I think she is entitled to loss of earnings, is she not?

MISS HUGHES: Yes, thank you, madam. In terms of costs I say it does not come near to the threshold for unreasonable conduct. A party may lose a claim. It does not go so far as to remove the basic principle that the small claims is supposed to be conducted without the involvement of legal costs to keep it truly a small claim economically. The matter has been judged in the defendant's favour and therefore to the extent that arguments are said to have been weak raised by the claimant, I say the penalty there is they have pursued the matter to trial, they have lost, they have paid an advocate and they have lost the expense of that. It does not go anywhere near so far as the kind of conduct which is really the emphasis in 27.14(g) when a party is behaving in a way which is improper or wholly unreasonable, obstructive and we see nothing of that nature.

The only thing that my friend raises is a failure to serve a directions questionnaire. I have no knowledge whether that was sent and therefore deemed served under the postal rule but in any event, even if it were not, madam, I say that again should not be nearly enough to trespass that fundamental principle about the small claims track.

THE DEPUTY DISTRICT JUDGE: They do also raise the issue about the signature in the particulars of claim, as well.

MISS HUGHES: Of course, they do. They did, madam. However, I say the claim has been dismissed, not even so much as summarily judged. So to say it had no prospect of success at all is perhaps a step further than the court has already gone and in any event is not the test which the court should be concerned with.

THE DEPUTY DISTRICT JUDGE: I am asked to deal with the costs application under 27.14(g), which is provision by way of allowing the ordering of costs where a party has behaved unreasonably. It is a relatively high threshold to behave unreasonably and, in my judgment, the fact that somebody has brought a claim with little prospect of success, or alternatively has failed in a claim, is not sufficient to cross that threshold.

Similarly in relation to the allegations made by the defendant and on her behalf of noncompliance with the CPRs I have already dealt with the issue of the signature on the Particulars of Claim.

There is an issue which has been raised in relation to the receipt of the directions questionnaire from the claimant, the defendant saying that she never received it. I have no evidence from the claimant at all whether or not that was actually sent and therefore deemed served within the provisions of the CPR. But even if it was not I do not consider that either one of those failures is sufficient to get over the threshold of showing that somebody has behaved unreasonably such that a costs order should be made in a small claims hearing.

So in those circumstances I think the costs will be simply the loss of earnings of *REMOVED*.

MR LAMOUREUX: Thank you, madam.

THE DEPUTY DISTRICT JUDGE: So claim dismissed, claimant to pay the defendant's expenses limited to one day's loss of earnings of *REMOVED*. That, of course, will be payable in the normal terms, within 14 days.

MISS HUGHES: Yes, thank you, madam.

THE DEPUTY DISTRICT JUDGE: Is there anything else?

MR LAMOUREUX: No, madam. Thank you.

MISS HUGHES: No, thank you for your time.

THE DEPUTY DISTRICT JUDGE: Thank you all very much. Mr Lamoureux and Miss Wilson, do you mind if I keep hold of the very helpful bundle of documents that you have sent in or would you like them back?

MISS QUAYLE: No, that is fine, thank you, madam.

THE DEPUTY DISTRICT JUDGE: All right, thank you.

MISS HUGHES: Have a nice afternoon, madam. Thank you.

THE DEPUTY DISTRICT JUDGE: Good morning everybody.

MR LAMOUREUX: Thank you, madam. Have a good day.

[Hearing ends]