IN THE COUNTY COURT AT WREXHAM **Case No: C7GF50J7**

The Law Courts
Bodhyfryd
Wrexham
LL12 7BP

2nd November 2016

BEFORE:

DEPUTY DISTRICT JUDGE METCALF

BETWEEN: **LINK PARKING LTD** Claimant

-and-

JAYNE GAYNOR PARKINSON Defendant

APPEARANCES:

For the Claimant: Mr Pickhill

For the Defendant: The defendant appeared in person and was not represented

APPROVED JUDGMENT

Transcript provided by:
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JUDGMENT **2nd November 2016**

DEPUTY DISTRICT JUDGE METCALF

1. This is a claim for £121.68 in respect of parking charges, allegedly incurred by the defendant on 9th January 2016, in Overstone Court, Butetown, Cardiff, for not displaying a valid parking permit. The basis of the claim is that the claimant entered into a contract with Isis Cardiff Management Company Limited (or Home from Home Property Management which seems to be their trading name). Pursuant to that contract they had the sole and exclusive rights to control unauthorised parking in Overstone Court. There are displayed in numerous locations around the carpark notices to the effect that this was private land, with parking permitted for vehicles displaying a valid parking permit only and parked in the correct allocated bay. I have seen photographs of those notices.

2. The claimant's case against the defendant is quite simple; that on 9th January 2016 she failed to display a valid parking permit and on that basis must pay a fine. On the face of that it seems relatively straightforward, but in fact the case is somewhat more unusual because it relates to a parking space that the defendant was the leasehold owner of, the defendant having purchased the property and parking space under a long leasehold in May 2008. That purchase included the relevant parking space. Thus she is the leaseholder of the property and space, owns it and has done for eight years.

3. There have, it would appear, been some problems with parking in the past such that the defendant had actually installed a parking bollard in 2012 to prevent others from using the space. There have also, on the defendant's evidence, been other parking companies engaged from time to time. It would appear that previously matters were perhaps more informal and, certainly on the defendant's evidence, there was no absolute obligation to display a parking permit.

4. The claimant took over management of the parking on or around 4th January 2016. The defendant was aware of this and had received a letter from the management company, which I have seen. It notes that Link Parking would start work on 4th January 2016, and that parking permits would be issued. The letter goes on to state:

> *"This permit will only allow you to park in your own designated parking space, if you park anywhere else you will be issued with a parking ticket."*

   The letter does not actually say that the permit must be displayed, but merely that it had been issued.

5. The defendants arrived at their property on the evening of Friday 8th January 2016, (this is a second home which they do not reside in all of the time). They collected their post from the post-box, but were going on to Swansea and did not at that stage go through it. They arrived back late evening and again did not look through the post at that point. They found the permit the next morning but unfortunately after the ticket had been issued. They appealed, but their appeal was refused.

6. The claimant's case is straightforward; they say they were doing what they were contractually engaged to do, and that unfortunate as it is, the defendant failed to display a permit in accordance with the adequate signage displayed, and in accordance with the case of the Supreme Court in *ParkingEye Ltd v Beavis* [2015] UKSC 67, the defendant must pay the penalty charge.

7. The defendant has raised a number of issues in her witness statement, but her primary case is that this was her parking space which she owned, and the claimant has no right to charge her a penalty for parking in it, irrespective of the display of a permit. As she says in paragraph seven onwards of her statement:

> *"We manage this parking space ourselves and have no need or desire for anyone else to manage this space. There was no need for the management company to apply parking restrictions to our parking space, and we have not given them permission to do so. They are fully aware that we manage the space ourselves, no representative of Link Parking Limited has been given permission to enter our parking space, and any representative doing so is a trespasser."*

8. I have been provided with a copy of the lease. This contains a number of potentially relevant sections. I note that Isis (or Home from Home) are a party to it and were engaged as managing agent by the seller, George Wimpey. Parking is mentioned only once, explicitly that I can see, in schedule 3 paragraph 16; it places an obligation on the leaseholder, Mrs Parkinson, as follows:

> *"Not to use any car parking space for any purpose other than for the parking of one private motorcar or one private motorcycle, which should be in a road-worthy condition and should exhibit a road fund licence."*

9. There is nothing to suggest that Mrs Parkinson has breached this covenant. More particularly there is nothing in the covenant that requires her to display a valid parking permit. Thus, it seems to me that pursuant to the lease, all that the defendant was obliged to do was park in her own space and ensure that the vehicle was road-worthy and appropriately taxed.

10. The question is, therefore, whether Isis by engaging Link Parking have in effect varied the original lease, or whether they are entitled to impose parking restrictions pursuant to [inaudible] 2, section 21 on page 13 of the agreement.

11. There is no evidence before me to suggest that they have in any way undertaken steps to vary the lease, and I am not satisfied on the evidence before me that section 21 applies such that by engaging the company they have applied new and binding regulations on the leaseholders. A mere letter regarding permits would not, in my judgment, suffice in this regard.

12. Moreover, I have real concerns as to whether this space, and the management of this particular space, falls within their ambit as a management company. Their obligations are laid out in the fourth schedule and it seems clear, from the fifth and sixth schedule that their obligations related to the common parts of the property. This parking space does not fall within the common parts of the property; it is the property of Mrs Parkinson, and on that basis I cannot see how the management company can interfere with her enjoyment of it, or charge her for its usage via a parking penalty or otherwise. It seems to me that to do so would have required a variation of the original lease and I have not seen such a variation.

13. I have also considered the reported case relied upon by Mrs Parkinson, which was *Pace Recovery v Mr N* [2016] C6GF14F0. It is not factually identical to this case, and does not in any event bind me. However the case raised similar issues, and the Judge in that case found that the parking company could not amend the terms of the tenancy agreement to bind a tenant, but rather that it would have to be the other party to the

contract, and it seems to me that the same principle applies here. It is Isis (or Home from Home) who ought to have sought to amend the lease, and I have seen no evidence that they have done so.

14. I note the other points raised in the claimant's statement regarding Consumer Contracts (information, cancellation and additional charges) Regulations 2013, and points regarding whether the penalty was displayed sufficiently prominently. Given my conclusion on the principal point, it does not seem to me that I need to give a judgment on whether those points apply. On the basis of my findings the claim cannot be a valid one and must be dismissed.

End of judgment