General Form of Judgment or Order

In the County Court at Wrexham	
Claim Number	A0JD1405
Date	5 December 2014

PARKINGEYE LTD 40 EATON AVENUE	**1st Claimant Ref** E0018014/RL/19009
MR FRANCO ANTHONY CARGIUS	**1st Defendant Ref**

JUDGMENT

Before Deputy District Judge C. Mahy sitting at Wrexham County Court on the 25th November 2014

Appearances:

Miss Tym – Counsel for the Claimant
Mr. Cargius – acting in person

1. This claim is brought by ParkingEye Limited to recover from the Defendant Mr. Cargius the sum of £100.00 which they describe as a parking charge issued on the 9th August 2013 as a result of his overstaying in their car park at the Snowdon Mountain Railway, Gwynedd. The undisputed facts are that the Defendant and his daughter decided to take a walk up the Llanberis Pass whilst she was home for the holidays. They arrived at Llanberis and parked their car in the Snowdon Mountain Railway car park at 12noon. The Defendant purchased a parking ticket for four hours at a cost of £4.00 and states in his witness statement that he expected to return within this time. Unfortunately on their descent from the Pass Mr. Cargius sustained an injury to his left ankle and fell badly cutting his right knee. He made his way with difficulty back to the car arriving at approximately 17.23pm, an overstay of 1 hour and 23 minutes. Although there was a sign at the car park enabling customers to purchase additional time (if required) at the Pay and Display machines before leaving, Mr. Carguis evidently did not notice the sign or in any event in his

shaken state did not apply his mind to it and left the car park without making any additional payment. It is clear from the parking tariff displayed at the car park that this would have involved him paying a further £2.00 for an extra 2 hours.

2. ParkingEye subsequently sent the Defendant a Parking Charge Notice requiring him to pay a charge of £100.00 reduced to £60.00 if he paid within 14 days. A reminder was sent on the 18th August and the following day the Defendant wrote to ParkingEye setting out his mitigating circumstances and asking them to cancel the charge. On the 30th August ParkingEye rejected the Defendant's appeal and he subsequently appealed to the Parking on Private Land Appeals (POPLA), who also rejected his appeal on 22nd November 2013. The Defendant clearly felt very strongly about this as on the 22nd November he contacted his MP who also wrote to ParkingEye requesting on behalf of his Constituent reconsideration of the charge. On the 27th November ParkingEye sent a Letter before Action and on the 17th January 2014 the Defendant was served with this County Court Claim for the £100.00 plus solicitors and court fees – total: £165.00.

3. I have before me two witness statements; one from Mr. David Greenbank on behalf of ParkingEye and a statement from the Defendant. Mr. Greenbank did not attend court for cross-examination and the claim, which is of course within the Small Claims jurisdiction, was heard on the basis of legal submissions only. In addition to their witness evidence both parties have filed legal arguments and have referred me to a number of Authorities.

4. In his Defence dated 10th February 2014 the Defendant asserts that *"I am not liable to the Claimant for the sum claimed, or any amount at all, for the following reasons:*

1. The Claimant's Notices do not create any contractual relationship between the Claimant and motorists using the car park.

2. Any consideration flows from the landowner and / or retainers on the site. The Claimant therefore has no standing to bring claims in their own name.

3. The Claimant has suffered no actual, or genuine pre-estimate of, loss as a result of the alleged overstay, and their charge of £100.00 is therefore not recoverable".

I should say at this point that ParkingEye have brought a number of cases in the County Courts seeking to recover parking charges of this kind and these are typically the kind of Defences which are raised against them. In a number of cases ParkingEye have been successful and in others they have not. It appears to me that these claims are very fact specific and what may be recoverable on one set of facts may not be on another.

5. Dealing firstly with the contractual point, it is now clear law that in order to be able to charge motorists for using a car park on private land there must exist a contractual relationship between the Owner or Manager of the car park and the motorist. Section 56 and Schedule 4 of the Protection of Freedoms Act 2012 deal with the recovery of unpaid parking charges on private land in England and Wales. The Guidance

issued by the Department of Transport provides at paragraph 7.1 *"Contracts for parking on private land can arise in a number of ways. However normally a car park will have signs setting out the terms and conditions upon which parking is offered. Drivers can then decide whether or not to accept those terms and conditions. In most cases a driver who parks in a car park with clear signage setting out the terms and conditions will be deemed to have accepted the terms and conditions and therefore entered into a Contract to park with the landholder."* In this case the Defendant did not really dispute that there was ample signage around the car park indicating that it was a Pay and Display car park and setting out the parking tariffs payable. The signs also clearly stated *"Failure to comply with this will result in a Parking Charge of £100.00"*. The Defendant did not dispute that the terms and conditions were clearly set out but argued that there was no Contract between himself and ParkingEye as ParkingEye were acting as agents for the landowner namely Snowdon Mountain Railway and therefore had no authority to sue in their own right. It is notable that the words "Snowdon Mountain Railway" appear prominently on the parking sign, and the Defendant's argument was that only they as landowner, and not the Claimant ParkingEye Limited, have authority to bring this claim.

6. In rebuttal of this aspect of the Defence, the Claimants in their reply to the Defence refer to the Claimant's Contract with the landowner, a copy of which I have also seen, albeit a number of sections were redacted on the basis that they were considered to be commercially sensitive. The relevant section of the Contract is clause 3.7 which reads as follows *"The Customer* (in this case Heritage Attractions Limited trading as Snowdon Mountain Railway) *being the landowner of the site ... hereby appoints ParkingEye to act as agent as the appointed car park operator. Such appointment shall include authority to:*

3.7.1 Carry out parking control and enforcement work at the site in accordance with the BPA Approved Operator Scheme Code of Practice, and

3.7.11 ParkingEye are hereby authorised to issue the Parking Charges (as defined in Schedule 2) should a breach of these conditions and restrictions occur, and collect such parking charges by any method up to and including by way of legal proceedings to recover charges due from drivers charged for unauthorised parking".

Unlike a number of other cases, the Contract does not specifically state that ParkingEye may bring proceedings in their own name, but in my view this is implied.

7. Miss Tym on behalf of the Claimant sought to explain the reference to Snowdon Mountain Railway on the sign as merely a description of the location of the car park, but in my judgment any ordinary person reading these signs would be likely to form the view that ParkingEye was managing the car park on behalf of Snowdon Mountain Railway and therefore acting as their agent. Indeed paragraph 3.7 above says so.

8. This type of Defence was specifically dealt with in what I may describe as the current test case of *ParkingEye Limited v Beavis & Wardley* in the Judgment of His Honour Judge Moloney QC at the Cambridge County Court in May this year. In that case the Claimant ParkingEye Limited managed the car park of the Riverside Retail Park in Chelmsford. In that case the facts were similar save that there was no mention of the owner of the site on the signage. Mr. Cargius referred me to paragraphs 5.6 and 5.7 of the Judgment. At paragraph

5.6 His Honour Judge Moloney states *"ParkingEye certainly purports to contract as principal. Its name, not the landowners, is on the signs"*. Mr. Cargius sought to distinguish that case on the basis that in this case there is a clearly named principal on the signage and accordingly only Snowdon Mountain Railway (or Heritage Attractions Limited trading as Snowdon Mountain Railway) have the right to sue. This argument may be superficially attractive, but is inconsistent with the actual wording of the Contract under which ParkingEye are specifically authorised to collect the parking charges on behalf of Snowdon Mountain Railway *"by any method up to and including by way of legal proceedings"*. His Honour Judge Moloney QC considered this point in the Beavis & Wardley case and came to the conclusion at paragraph 5.9 of his Judgment *"I conclude that in these two cases ParkingEye was entitled to and did Contract with the motorists as principal, not as agent for the landowner, and is lawfully entitled to pursue them for the charges in its own name"*. Whilst the Beavis & Wardley case is only persuasive, I agree with the conclusion of His Honour Judge Moloney QC on the contractual point and therefore reject the first part of the Defendant's Defence.

9. Turning to the second aspect of the Defence, namely that any consideration for the Contract flows from the landowner and not the Claimant, this is essentially the same contractual argument put in a different way. Again this was dealt with by His Honour Judge Moloney QC in his Judgment and rejected. At paragraph 5.4 he states *"The business efficacy of the Contract necessarily requires that ParkingEye shall have the right and power to confer valid licences to park cars on the site. In my Judgment, its exercise of that power in a particular motorist's favour plainly constitutes sufficient consideration"*. Accordingly I also reject the second part of the Defendant's Defence.

10. I therefore turn to the third part of the Defence, namely that the Claimant has suffered no actual or genuine pre-estimate of loss as a result of the alleged overstay and their charge of £100.00 is therefore not recoverable. The Claimant once again relied upon the Judgment of His Honour Judge Moloney QC in the Beavis & Wardley case. In that case the parking charge was £85.00 reduced to £50.00 if paid within 14 days. At paragraph 7.16 of his Judgment under the heading "Is this Provision Enforceable?" His Honour Judge Moloney concluded that *"Although there is a sense in which this contractual parking charge has the characteristics of a deterrent penalty, it is neither improper in its purpose nor manifestly excessive in its amount. It is commercially justifiable, not only from the view points of the landowner and ParkingEye, but also from that of the great majority of motorists who enjoy the benefit of free parking at the site, effectively paid for by the minority of defaulters, who have been given clear notice of the consequences of overstaying"*.

11. A similar decision was reached in the case of Somerfield Stores v ParkingEye before His Honour Judge Hegarty QC in March 2011 in which a parking charge of £75.00 was not considered to be a penalty although an increase to £135.00 might be.

12. Counsel for the Claimant contended that the £100.00 charge was a genuine pre-estimate of loss and that the court had to take into account the cost of running the car park. She added that the British Parking Association Code of Practice provided that anything in excess of £100.00 would be considered unreasonable and therefore by definition the charge of £100.00 was not. She conceded that the amount would depend

on the site and that some sites were justified in charging more than others. The Claimant has to go through the processes of ascertaining the details of the owner of the vehicle from the DVLA, issue Parking Charge Notices and letters and all of this costs money. She claimed (without providing any evidence) that the charge of £100.00 fell below the actual cost of pursuing the breach and was therefore not a penalty. The Claimant's Counsel asserted that it was for the Defendant to prove that the charge was a penalty. I disagree. It is the Claimant's case and it is for them to prove that the charge is reasonable and commercially justified as a genuine pre-estimate of loss.

13. In my Judgment this case can be distinguished from the Somerfield Stores and the Beavis & Wardley cases in that both those cases dealt with **free** car parks, where the only charges recovered by ParkingEye were from those motorists who overstayed. Thus it was argued that the parking charge of £75.00 or £85.00 levied on overstays was commercially justifiable, as this was the only revenue received by ParkingEye for managing what was otherwise a free car park. This is not the case here. ParkingEye are charging a significant sum of money to motorists who park in the Snowdon Mountain Railway car park. Motorists who park for two or four hours pay a £1.00 an hour and the hourly tariff then reduces with the length of stay. Mr. Carguis paid £4.00 for a four hour stay and, had he fully appreciated the fact that he could have paid for an extra two hours before leaving the car park, the additional cost to him would have been £2.00. It therefore appears in my judgment that ParkingEye accept that there is no real loss to them by motorists overstaying, provided that they pay for further parking time at the advertised rate before they leave the car park. I accept that once a motorist fails to comply with the terms and conditions searches have to be made of the DVLA, letters sent out and so on but in my judgment, and without any evidence to the contrary, the charge in this case of £100.00 is likely on the balance of probabilities to far exceed the actual loss to the Claimant. Furthermore, the wording on the signage *"Failure to comply with this will result in a parking charge of £100.00"* is in my view intended to be a deterrent to motorists from either underpaying or not paying at all. The fact is that ParkingEye would have been quite satisfied if Mr. Carguis had paid a further £2.00 and the subsequent charge of £100.00 is in my judgment totally disproportionate to the level of ParkingEye's loss. It is in my judgment a penalty and therefore unenforceable in this particular case.

14. I am of course aware that the issue of penalty charges is currently subject to an appeal to the Court of Appeal in the Beavis and Wardley case but, as I have already indicated the facts in this case are somewhat different and my decision is based upon these particular circumstances. To his credit the Defendant before the issue of these Proceedings made an offer to pay the sum of £10.00 to cover the additional parking charge, but this was rejected.

15. For the reasons which I have already given, I find in this case for the Defendant and the Claimant's claim is dismissed. Mr. Carguis informed me at the conclusion of the hearing that he had lost two days work due to having to come to court for this and the previous hearing and, should he be successful, he wished to claim £165.00 for loss of earnings. Under Practice Direction 27 of the Civil Procedure Rules a party is entitled to claim up to £90.00 per day for loss of earnings and therefore £165.00 is not an unreasonable sum. I therefore award the Defendant his loss of earnings in the sum of £165.00 to be paid by the Claimant within 14 days.

16. The handing down of this Judgement will take place on 7 January 2015 at 9.30 am at County Court Wrexham, Law Courts , Bodyhyfryd, Wrexham , LL12 7BP.

27th November 2014