IN THE COUNTY COURT AT CROYDON **Claim No. C7GF51J1**

The Law Courts
Altyre Road
Croydon
CR9 5AB

Thursday, 24th November 2016

Before:

DISTRICT JUDGE COONAN

Between:

PACE RECOVERY AND STORAGE LIMITED

Claimant

-v-

MR [redacted] N [redacted]

Defendant

MR Charman appeared In Person on behalf of the Claimant Company

The Defendant appeared In Person with his McKenzie friend, Mr Carrod

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JUDGMENT APPROVED BY THE COURT

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DX: 26258 Rawtenstall – Telephone: 0845 604 5642 – Fax: 01706 870838

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JUDGMENT

DISTRICT JUDGE COONAN:

1. I have to deal with this first issue and depending on what I say in relation to this issue, indicate whether I will go on to consider the other issues. This claim arises out of a parking fine that was imposed by Pace Recovery and Storage Limited. I am not quite sure of the date. The particulars of claim are quite condensed. That is understandable when it is issued online but the due date appears to be 3rd February 2016 and it is in the sum of £150.

2. One of the issues that arises for consideration in this case which did not arise in cases like *ParkingEye Limited (Respondent) v Beavis (Appellant) [2015] UKSC 67* and some of the other cases is that the defendant is a resident on the estate which has parking bays which can be used by residents. It is unlike a car park which is being managed by whatever the name of the parking people are that manage it outside a supermarket and suchlike. That was a dimension that arose for consideration in the first case that was before me and I do note the case of His Honour Judge Harris in Oxford, which although the ultimate decision was on a different ground - there was an issue about what is meant by parking - the court did recognise that when you have a resident, the tenancy agreement or the lease will take precedence over the arrangement between the ultimate landlord and the third-party parking manager unless there have been changes to the lease or the tenancy agreement to enable the parking manager's requirements to become embedded in the tenancy agreement. That is what I have to consider today: whether there has been an effective variation of the tenancy agreement so that it is legitimate for Pace Recovery and Storage Limited to claim what they seek from the defendant.

3. It is clear to me that there has been a series of parking charges imposed on Mr N[redacted] starting from 1st July 2014 and some have been written off and some are still awaiting what I call debt repayment. I wanted to clarify with Mr Charman that he is agreeing that there is no express agreement between Affinity Sutton and Mr N[redacted] that the claimant can impose a fine on Mr N[redacted] as a resident if he parks in a particular bay without a parking permit. There is agreement on that. The only way, therefore, in which the claimant can succeed is by showing that they can bring a variation within paragraph 6(3) of the tenancy agreement. Clause 6(3). I think it is pertinent to actually read out what it says because this is a matter of contract that I am dealing with:

> "We can also change this agreement by following the procedure shown below.
>
> (a) When we are considering changing any term of this tenancy, we will write to you."

4. It goes on to say for what purpose. Of course, the term that is relevant for me to consider here is at clause 4(17) onwards to clause 4(22). You will note from looking at clause 4(17) to clause 4(22) that there is no provision here requiring a resident to display a permit. There is no dispute that Mr N[redacted] is a tenant. He is a resident. Nor is

there a provision that, in the absence of such display, a resident can be fined and/or the wheel of his car can be clamped. In order for the claimant to succeed, they would have to show that there was compliance with the procedure under clause 6(3) such that there is included within clauses 4(17) to 4(22) a provision that requires the tenant, Mr N[redacted], to display a permit and also that if he fails to do so, he can be fined by the third-party provider, in this case the claimant.

5. In this regard, the claimant relies on the document at AK2. This, Mr Charman says, started the process of change. It is addressed to Miss *[Z[redacted]?]* but we understand that Miss Z[redacted] is a co-tenant of the property. It is dated 2nd February 2006 and it is from Sutton, from Lynne Anderson, the admin receptionist. I do not know what "TSO" means but it is not disputed that it is from Affinity Sutton:

> "We would like *[talking about the future]* to introduce a new parking scheme where you live. We would give you a residents' parking permit and a visitors' permit. If you do not own a car, you would still be able to apply for a visitors' permit. We *[again indicating what they would do]* would put up signs warning non-residents *[I note that]* that parking without a permit means a fine of £60. Wardens would make regular checks and issue parking tickets to any vehicle not displaying a permit. If everyone agrees, we will start the scheme later this year."

6. You will see there immediately an ambiguity in the fourth sentence and the fifth and it seems to me that any reasonable person reading that document would assume the fifth sentence flowed from the fourth and that the reference to "any vehicle" would be to those who were non-residents but, be that as it may, we then go on to AK3. It is dated 10th March 2006. The letter at AK2 appears to be compliance with clause 6(3)(a):

> "When we are considering changing any term of this tenancy, we will write to you and tell you that we are planning a change..."

That letter at AK2 does indicate that.

> "... tell you what the change is..."

7. That is set out in paragraph 2, albeit there is a slight ambiguity as to the extent of that change.

> "... tell you what the change is and how it will affect you, ask for your comments on the change. We will give you a reasonable length of time to give us your comments."

Then at (b):

> "We will consider your comments and any comments we receive from other tenants."

Then at 6(3)(c):

> "if we decide to go ahead with the change..."

The change that has been highlighted in the letter at AK2:

> "... we will write to you again <u>at least a month</u> (Judge's emphasis) before we make the change to tell you the date that the change will come into force and tell you how the change will affect you."

8. The letter at AK3 is dealing with 6(3)(c):

> "We wrote to you recently asking what you thought about introducing a parking enforcement scheme where you live. The overwhelming majority of residents who replied are strongly in favour so we intend to start the new scheme from 20th March 2006. It is important you apply for your parking permit before 20th March 2006. Otherwise your car or your visitor's car parked without a permit on display will be fined £60."

9. You will note that that does not give a month. Therefore, there has not been compliance with section 6(3)(c) of this provision. In any event, it does not appear to be setting out the change which was in the initial document which would say they would put up signs warning non-residents that parking without a permit means a fine of £60. This letter, which is supposed to be dealing with the consultation for the change identified at AK2, seems to have morphed into a change where everyone would be subject to this provision but, in any event, what it has not done is complied with the provisions of 6(3) because it did not give a month before implementation of the change. At that stage, there has been no variation of the tenancy agreement, such that there is a provision enabling residents to be fined if they fail to display a permit.

10. If we then go on to AK5, I accept that Mr N[redacted] went out and got a permit but that is not the point. The point is: has there been a variation pursuant to clause 6(3) because in the absence of an agreement in writing between the parties, the only way in which the terms can be changed is by varying it under 6(3)? To do that there has to be compliance with each of the provisions of 6(3). We now go on to AK5. This is a document dated 25th March 2010. Again it says it is a consultation, so it appears to be, again, relying on 6(3). It says:

> "Dear Mr N[redacted] and Miss Z[redacted]
>
> With effect from 26th April 2010..."

It appears to give a month.

> "... parking management contractor Central Ticketing are intending to start using wheel clamping and the towing away of vehicles to ensure that all outstanding tickets are paid."

11. That is the change they are proposing: clamping. They are not proposing, again, to impose a system of fining and a requirement to put a permit in the car. They are going to the next step, which is clamping, and also increasing the fee for the parking ticket charge to £100 and I think also the requirement that you will need to bring your vehicle registration document and a copy of your tax disc to get a residents' permit.

> "When issuing a parking ticket, Central Ticketing will take a picture to prove that there is no valid permit clearly displayed in your vehicle."

12. If there were any doubt about this change, you will see that the letter at AK6:

> "I recently wrote to you about Central Ticketing and the estate parking. I asked all the residents on the estate whether they wanted to continue using Central Ticketing and accept the new terms or have parking deregulated. Following this consultation, we continued to use Central Ticketing. So from Monday, 26th April, Central Ticketing will clamp vehicles that have had three or more outstanding tickets."

13. Without as yet there having been any variation under clause 6(3) to enable ticketing to take place in the first place. Again, that letter does not in my judgment permit a variation to enable there to be a permit system imposed on the residents. At AK7—

MR CHARMAN: Sorry, madam. I am really sorry to interrupt you. It is quite important though. On AK5, the reason why it did not comply?

THE DISTRICT JUDGE: Because the consultation change was just to clamp, just clamping, and if you can see the letter—

MR CHARMAN: You are saying that the first one was *[inaudible]* the ticketing, that is null and void and the fact they have a change to that to say, "If you do not pay your ticket, we are now going to clamp you," also becomes null and void. Thank you.

THE DISTRICT JUDGE: The clamping presupposes that they have got a legitimacy in having the ticketing. My decision on that is that there has not been any variation to enable there to be ticketing in order for there to be clamping, if you see what I mean.

MR CHARMAN: I do. Thank you.

THE DISTRICT JUDGE: As you see from the letter at AK6 it says:

> "So, from Monday, 26th, vehicles will be clamped."

It is quite clear. Then we go to AK7. This is dated 15th February 2011 and it is introducing new management providers. It is P4Parking:

> "They will operate a parking ticket, wheel clamping and vehicle towing service which allows residents and visitors to park within the estate by deterring unauthorised parking."

14. You will see from the wording used it does not look as though it is a consultation process. It is saying it <u>will</u> be operating a ticketing, wheel clamping and vehicle towing service. It also indicates what is required to renew the permission which, of course, I have already decided has not been varied at all because of the invalidity of the initial letter. It did not give a month's notice. Just for clarity, I refer back to AK2 and AK3. It does not appear to be a consultation document at all for the purposes of 6(3). Even if it were, you will see that this is going to be operative from 28th February 2011. It does not give a month, so in any event it falls foul of clause 6(3)(c).

15. Then if we go on, I think AK8 deals with difficulties about parking permits and people parking which does not in any way affect what I am dealing with today. The only other document relevant to this particular issue is going to be AK16. This is when the claimant comes on the scene and there is a mail merge dated 13th March 2014. This is from Affinity Sutton again:

> "We sent you a newsletter earlier this year about parking on your estate. We wanted to contact you to let you know more about the new contract and how you can apply for a permit with the contractor for the coming year. We are enclosing a fact sheet with information about the new contractor and the rules which are coming into place and an application form for you to apply for your new permit."

16. Again, it does not appear to be a consultation document. It is talking about what will happen but, in any event, it is talking about what is going to happen from 1st April 2014, so it does not give a month. Even if it were to be viewed as a consultation document, it falls foul of clause 6(3)(c). It does not give a month's notice.

17. Therefore, when one looks at the terms and conditions of the parking permit application form which the claimant has introduced to make matters more efficient and understanding the desire of Mr Charman to keep the issuing of permits and the retention of information separate from the enforceability of the parking charges, it means that the terms and conditions on the back of that parking permit are of no applicability because they are not part of a variation and they are not part of a variation either because they are not part of a consultation document or, even if that were so, they fall foul of clause 6(3)(c). Insofar as it says, "As a resident it is accepted that the ownership of a permit does not give the driver the authority to park. A permit must be clearly displayed at all times for the vehicle to be authorised to park," that is of no effect whatsoever.

18. As I said, again, I have to view this as a pure matter of contract and I am looking at a variation of a contract between Sutton and Mr N[redacted] and for variation purposes the claimant is relying on clause 6(3) of that tenancy agreement. Having gone through the documentation upon which the claimant has relied to demonstrate that there was an effective variation which meant that Mr N[redacted] had agreed to be subject to a permit system and that he had agreed that he could be fined if he failed to display a permit and that he had agreed he could be clamped if he got three or four tickets, I have to be satisfied that the contract has been varied to include such a provision and I am not satisfied because I am not satisfied that clause 6(3) was complied with at any relevant stage. Therefore, the tenancy agreement at present takes precedence over the arrangement between Sutton and yourself, the claimant, Pace Recovery. As I have said, it is a pure matter of contract that I have to decide. Therefore, the claim is dismissed.

[Judgment ends]