

Pipers Row
Wolverhampton WV1 3LQ

16th September 2016

Before:

DISTRICT JUDGE WEBB

(In Private)

B E T W E E N :

COMBINED PARKING SOLUTIONS LIMITED

Claimant

- and -

PRESTIGE KEYS CAR HIRE LIMITED

Defendant

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MR MICHAEL PERKINS appeared on behalf of the Applicant.
MR SAHIB IFTIKHAR (Litigant in Person) appeared on behalf of the Respondent.

J U D G M E N T

(As Approved)

DISTRICT JUDGE WEBB:

- 1 Before me today I have heard the final small claims track hearing in the case of Combined Parking Solutions Limited and Prestige Keys Car Hire Limited. In this matter I have heard from Mr Perkins for the company who has attended to present the case and Mr Iftikhar a director of the defendant company has prepared a witness statement and attended today.
- 2 It is not disputed in this case that on 28th November 2015, a vehicle FV12 SFX parked at a location at St Lillian's United Reformed Church, Villa Road in Luton. I have seen and it is not disputed that Combined Parking Solutions were contracted with the owners of that land to provide parking services and therefore they can under that contract sue for unpaid parking charges.
- 3 It is also not disputed that at the site there was a very clear warning sign which indicates this is private land, allowing only the parking of motor vehicles displaying CPS permits. It further goes on to say that if there is not a valid permit then effectively you enter into a contract if you park there with a charge of £60 if payment is made within 14 days which rises to £100 if you do not pay it at that point in time.
- 4 The Supreme Court has considered the validity of this type of arrangement and has determined it as a matter of contract. A person enters onto an area of land where signage is appropriately displayed and they enter into a contract that either they will only remain for the defined time or in these circumstances they will pay a charge if they are not permitted to park there; that is not in dispute.
- 5 What is also not in dispute is that Prestige Keys Car Hire Limited are a car hire firm. They operate under terms and conditions, they rent out motor vehicles and this was one of their motor vehicles. At the relevant date the vehicle appears to have been hired by an Aaron Philip Douglas.
- 6 What then happens is, in accordance with their procedure, Combined Parking Solutions forward to the keeper of the vehicle, having ascertained that through the DVLA, a document which is called 'a notice to keeper'. That 'notice to keeper' requires and requests the forwarding of the various documents required and it states: "If the vehicle is hired or least to a third party then your response should fully comply with the requirements to transfer liability to the hirer as defined under the Protection of Freedoms Act 2012, Schedule 4, section 13." That letter was sent on 15th January.
- 7 There is a dispute as to whether that letter was received. What is accepted is that a copy of it was forwarded again and on 12th April 2016 on behalf of the defendant company Mr Iftikhar forwarded to the claimant the front sheet of their hire form and a document indicating that the hirer was a Mr Douglas.
- 8 The question which I have to determine is whether the efforts made by Mr Iftikhar to forward the documents complied with the strict requirements set out in the Schedule referred to. If the documents do not comply with those strict requirements then I must as a matter of law find that Combined Parking Solutions have the right to enforce against the keeper of the vehicle.
- 9 The relevant legislation is the Protection of Freedoms Act 2012 and I have been referred to section 13 of Schedule 4 of the Act, which deals specifically with hire vehicles. It indicates

at 13(1): "This paragraph applies in the case of parking charges incurred in respect of parking of a vehicle on relevant land if the vehicle is at the time of parking hired to a person under a hire agreement" -- that is satisfied, and (6): "the a keeper has been given a notice to keeper in the relevant period". -- I am informed that the relevant period is 56 days and that notice was given within that period and therefore this section gives the right to exercise the power under paragraph 4 of the Schedule to enforce against the registered keeper rather than the hirer.

- 10 However, it is clear at 13(2): "The creditor may not exercise the right under paragraph 4 to recover from the keeper any unpaid parking charges specified in the notice to keeper if, within the period of 28 days beginning with the day after that on which the notice was given, the creditor is given (a) a statement signed by or on behalf of the vehicle-hire firm to the effect that at the material time the vehicle was hired to a named person under a hire agreement." Very simply, the defendant company complied with that paragraph; they provided a statement indicating that it was hired by a named person.
- 11 However, they have a further obligation set out in 13(2)(b), which is to provide a copy of the hire agreement and at 13(2)(c) to provide a copy of a statement of liability signed by the hirer under that hire agreement.
- 12 So the structure of the law is that it allows hire companies to deflect their obligations under Schedule 4 of the Act if they provide the required documentation within 28 days. I reiterate the required documentation is a statement as to the hirer, a copy of the hire agreement and a copy of a statement of liability.
- 13 The law continues to define a copy of a statement of liability at 13(3): "The statement of liability required by sub-paragraph (2)(c)(a) must contain a statement by the hirer to the effect that the hirer acknowledges responsibility for any parking charges." So the law is clear and I have already indicated to the parties my judgment in this matter on the pure narrow fact is very simple.
- 14 Within 28 days the company did not forward to the claimant a copy of the hire agreement. What they forwarded was the front sheet of the hire agreement. The hire agreement is comprised of a proforma fill-in form, on the back of which appear terms and conditions. The document is not explicable or understandable without reference to both sides of the document. For this reason on receipt of the front sheet of the hire agreement there was an email conversation between the claimant and the defendants along the lines of -- and I paraphrase - - "You've not sent us the full document." "We don't have to." "Let's see you in court." So that has been, in essence, the dispute. I can say as a matter of clear construction of the statute sending part of a contract is not in compliance with the statute. A contract is not understandable and cannot be properly construed without both parts of the contract and therefore the defendant must lose their case today.
- 15 However, it is also sensible for me to look into the document itself. The statement of liability on the front of the document, i.e. the document provided willingly by the defendant, indicates: "I have read and agreed to the terms here and overleaf and warrant that all the details are correct. I understand that I will be liable for the period of the hire and for the purposes of the Road Traffic Regulation Act 1984, the Road Traffic Offences Act 1988 and the Road Traffic Act 1991 and any road user charging scheme as the owner of the vehicle for the offences, charges, excesses and penalty charges shown in terms and conditions overleaf." To my mind that does not mention parking charges. I have already construed that the wording 'road user

charging scheme' does not explicitly cover parking charges, so on the face of it there is no liability in any event upon the hirer to meet parking charges.

- 16 It is only when one considers paragraphs 16 and 6 of the terms of conditions, where there is an amplification and possibly, if I take a sympathetic view of the statement of liability, clarification of the liabilities which extends those to include parking charges. So it is absolutely apparent that on receipt of the front page of the contract the claimant company could not be at all certain that liability had been passed over. The whole purpose of Paragraph 13 of Schedule 4 of the Act is to allow a chain of liability to be appropriately passed and in these circumstances the chain was not appropriately passed.
- 17 It is not for me to advise commercial enterprises how to conduct their business, but Prestige Keys Car Hire could well do with an element of clarification in terms of their statement of liability; it might make situations like this avoidable in the future.
- 18 Mr Iftikhar has made the point that they felt to some extent affronted by the request for their terms and conditions. Their terms and conditions are documents which are of a commercial nature, I do agree with that. They indicated that Combined Parking Solutions are a commercial entity, they are not a council, they are not regulated under the different regulatory schemes which cover statutory bodies and they felt that in those circumstances it was not necessary to forward the document.
- 19 The difficult is, unfortunately, this is a discrete area of law which refers to hire vehicles and it makes it clear that in compliance with an appropriate request that the full contract has to be provided and therefore in a sense their decision not to send it may have proved fatal to their defence in this matter.
- 20 I thank the parties for actually going through a discussion today, listening to what everyone has to say and conducting it in a sensible manner, but I find for the claimant.
- 21 So where does that leave in terms of pounds, shillings and pence?

MR PERKINS: We have the initial claim as £150, we have an issue fee of £25, the fining fee I believe of £25 and there is just in line with the fees allowed under Part 27 £6.05 in expenses, consisting of £2 car parking (several inaudible words due to fault in recording) being a total of £206.05, sir.

DISTRICT JUDGE WEBB: I like to break it down.

MR PERKINS: Okay, sir.

DISTRICT JUDGE WEBB: So (1) the defendants shall pay -- it is £150, is it not, the actual----

MR PERKINS: (Inaudible).

DISTRICT JUDGE WEBB: ----and that is set out in the contract.

MR PERKINS: Sir.

DISTRICT JUDGE WEBB: £150 in respect of parking charges and fees; (2) the defendants shall pay the court fees of £50?

MR PERKINS: £50 in total, sir, yes.

DISTRICT JUDGE WEBB: Court fees of £50; (3) -- they are entitled to their travel. They have not had to travel as far as you, but from Bilston I imagine----

MR PERKINS: That is (inaudible), sir.

DISTRICT JUDGE WEBB: ----their office is. The defendant shall further pay travel expenses and did you say £6 something?

MR PERKINS: £6.05

DISTRICT JUDGE WEBB: £6.05. Thus a total of £206.05 to be paid by 4 p.m. on 30th September 2016.

MR IFTIKHAR: Can I ask, you know if there's an appeal when you're obviously going against a company, shouldn't a parking fine be frozen like how it is with councils, where it should be held until the claim result?

DISTRICT JUDGE WEBB: You have made no appeal.

MR IFTIKHAR: No, they don't have an appeal process, they just have -- you just reply to the notice.

DISTRICT JUDGE WEBB: In the letter it said you can set out your considerations, does it not?

MR PERKINS: There's (inaudible) that ----

DISTRICT JUDGE WEBB: ----and it refers to some sort of ombudsman----

MR PERKINS: Yeah, okay, sir. Yeah, the IOS, yes, sir.

MR IFTIKHAR: On the first letter you're talking about, the letter they sent out? Because----

JUDGE DISTRICT WEBB: Yes.

MR IFTIKHAR: ----obviously we didn't receive anything on the (inaudible). I'm just talking about from the point we received it.

DISTRICT JUDGE WEBB: It----

MR IFTIKHAR: Wouldn't our appeal what we replied back (inaudible). You know, we're not the hirer. Shouldn't it at that point be frozen and not escalated to the point of----

DISTRICT JUDGE WEBB: Well, unfortunately it is a contractual issue and what the contract says and the contract is set out according to the Supreme Court perfectly validly on a notice and it says to cover additional administration costs are charged and will increase by £50 if a charge remains unpaid and debt recovery or legal action is commenced. It has. You are caught by the contract. The letter which, if I had to make a finding as to whether it was validly served,

the letter which contains that was sent by first class post to the registered address of your company and was not returned by the post office.

MR IFTIKHAR: It's not the registered address of the company.

MR PERKINS: We have to under the Schedule send a name -- to the name held on the V5----

DISTRICT JUDGE WEBB: Yes, (inaudible).

MR PERKINS: (Inaudible due to fault in recording).

DISTRICT JUDGE WEBB: So I cannot help you with that one either.

MR IFTIKHAR: No, no, that's fine. I just was asking.

DISTRICT JUDGE WEBB: Thanks very much. Nice to see you all.

MR PERKINS: Thank you, sir.
